

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
SUPPLEMENTAL  
BRIEF**





75—7381

---

United States Court of Appeals

For the Second Circuit

---

MARY ANDERSON, MAZELL PEOPLES, CHRISTINE JAMES, ANNIE BARNES, CHRISTINE PEYTON, FRANCINE TOLLIVER, ELIZABETH MINNIEFIELD, YVONNE HENLEY, ANN SCRUGGS, BLANCHE THOMAS and EVELYN PERKINS,

*Plaintiffs-Appellees,*

—US—

JOSEPH W. McGOVERN, Chancellor of the Board of Regents of the State of New York; WILLARD A. GENRICH, a member of the Board of Regents; THE BOARD OF REGENTS OF THE STATE OF NEW YORK; and DR. EWALD B. NYQUIST, Commissioner of Education of the State of New York,

*Defendants-Appellants.*

---

Supplemental Affidavit on Behalf of

**DEFENDANTS-APPELLANTS**

JOSEPH W. McGOVERN, WILLARD A. GENRICH,  
BOARD OF REGENTS and DR. EWALD B. NYQUIST

---

JOHN P. JEHU

Associate Counsel

Attorney for Defendants-Appellants

Joseph W. McGovern, The Board of  
Regents of the State of New York  
and Dr. Ewald B. Nyquist

State Education Department

Washington Avenue

Albany, New York 12234

(518) 474-6150

EDWARD L. ROBINSON

Attorney for Willard A. Genrich

3400 Marine Midland Center

Buffalo, New York 14203

(716) 847-8433

ROBERT D. STONE

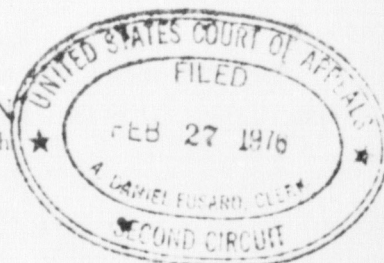
Counsel and Deputy Commissioner  
for Legal Affairs

State Education Department

Washington Avenue

Albany, New York 12234

(518) 474-6400







MARY ANDERSON, MAZELL PEOPLES, CHRISTINE JAMES,  
ANNIE BARNES, CHRISTINE PEYTON, FRANCINE  
TOLLIVER, ELIZABETH MINNIEFIELD, YVONNE HENLEY,  
ANN SCRUGGS, BLANCHE THOMAS and EVELYN PERKINS

-VS-

JOSEPH W. MCGOVERN, Chancellor of the Board of Regents of the State of New York; WILLARD A. GENRICH, a member of the Board of Regents; THE BOARD OF REGENTS OF THE STATE OF NEW YORK; and DR. EWALD B. NYQUIST, Commissioner of Education of the State of New York,

STATE OF NEW YORK)  
                                ) ss.:  
COUNTY OF ALBANY )

1. That he is the attorney of record for defendants-appellants Joseph W. McGovern, The Board of Regents of the State of New York and Dr. Ewald B. Nyquist herein.

2. That this affidavit is submitted in order to acquaint the Court with relevant events subsequent to the service and filing of previous papers in the premises which events are of paramount pertinence to this litigation.

3. That, viewed against the sole claim of the complaint herein, i.e., that the January 22 statement of the Board of Regents had the effect of stopping all further efforts to eliminate racial imbalance in the schools of the State of New York, the following facts are matters of record:

The Commissioner of Education has issued show cause orders in three of the five school districts referred to in this litigation; he has issued two final orders (in two of the said five cases); and he has issued three further final orders, all of which eight orders have the purpose and effect of enforcing the continuing Regents policy to reduce racial imbalance as a matter of educational policy:

July 25, 1975: Mount Vernon. Show cause order, returnable August 14, 1975

July 25, 1975: Newburgh. Show cause order, returnable August 21, 1975

November 12, 1975: Lackawanna. Show cause order, returnable December 1, 1975

December 1, 1975: Mount Vernon. Final order.

December 3, 1975. Newburgh. Final order.

December 18, 1975. New York City (Erasmus Hall). Final order.

December 18, 1975. New York City (Andrew Jackson). Final order.

December 18, 1975. New York City (Community District 18). Final Order.

4. That, of the orders of the Commissioner of Education set forth in paragraph 3 hereof, two have already been involved in litigation:

The Newburgh order of December 3, 1975: An Article 78 proceeding in State Supreme Court was begun by a show cause order and temporary restraining order of January 14, 1976 (issued by Mr. Justice Conway); a temporary injunction was issued on February 3, 1976 (Mr. Justice Pennock) (Board of Education, City School District of the City of Newburgh v. Nyquist).



The Mount Vernon order of December 1, 1975: Summons and complaint in the United States District Court for the Southern District of New York, dated January 12, 1976 (N.A.A.C.P., et al. v. Nyquist, et al.). Plaintiffs are represented by Nathaniel R. Jones, Esq., and James I. Meyerson, Esq.

5. That Department personnel have been meeting with staff of the Buffalo City School District in order to prepare and facilitate a plan for the Buffalo City School District.

As a result of these cooperative efforts, the board of education of the City School District of the City of Buffalo, on February 11, 1976, adopted a plan for increased racial integration of the Buffalo public schools, and submitted the same to the State Education Department on February 13, 1976. This plan proposes the closing of ten schools in Buffalo and the conversion of a number of other schools, all for the purpose of integrating the Buffalo school system.

This plan will be studied by the staff of the Department and by the Commissioner, and if tentatively acceptable to him, an order will be issued by the Commissioner directing the parties to the appeal presently pending before him to show cause why the plan should not be implemented. Following oral argument and the submission of papers in response to such order to show cause, The Commissioner will issue a final order.

With respect to the City School District of the City of Utica, it is anticipated that a similar order to show cause why a specified integration plan should not be implemented will have been issued by the time of oral argument herein.

6. That the above facts clearly demonstrate that actions of the Commissioner of Education with respect to racial segregation in the public schools have in no way been impeded by the January 22, 1975 statement adopted by the Board of Regents, the same having been clarified by the February, 1975 statements of the Board of Regents.

7. That the complaint in the Mount Vernon matter referred to above (par. 4), with Nathaniel R. Jones, Esq., as one of the attorneys for plaintiffs, states as follows, in paragraphs 54 and 55 thereof:

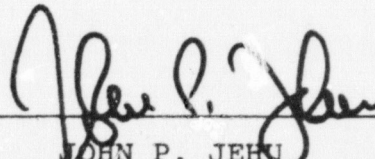
"54. The February 7, 1975 proceeding for the Defendant District to show cause before the Commissioner what reason, if any, it was incapable of implementing the June 13, 1968 decision on a fiscal basis, was subsequently postponed as a consequence of a Board of Regents Statement issued on January 22, 1975 and addressing itself to racial integration. A copy of said statement is attached hereto and made a part hereof.

"55. Thereafter, on February 20, 1975, the Board of Regents clarified its position on racial integration, pursuant to a request of the Defendant Commissioner, and, in substance reiterated its pre-January 22, 1975 position in this regard."

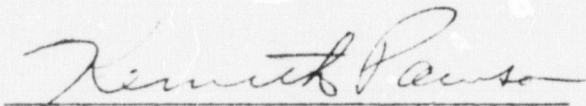
While the conclusion expressed in the last clause of paragraph 55 is a matter of judgment and interpretation, it is clear that Mr. Jones no longer regards the Regents' statement of January, 1975 as in any way impeding the Commissioner of Education in dealing with instances of claimed racial segregation in the public schools.



8. That, for all the foregoing reasons, it is submitted that this litigation, at this point, has clearly become moot; that the continuation of this litigation can serve no useful purpose whatever; and that therefore the action and complaint herein should be dismissed by this Court. That, if the Court should be troubled by the question of jurisdiction over this appeal, it is submitted in the alternative, that the Court should remand this matter to the United States District Court for the Western District of New York with the direction to dismiss the same.

  
\_\_\_\_\_  
JOHN P. JERU

Sworn to before me this  
20<sup>th</sup> day of February, 1976.

  
\_\_\_\_\_

KENNETH PAWSON  
Notary Public, State of New York  
Qualified in Albany County  
Commission Expires March 30, 1977





FOR RELEASE MONDAY, JULY 28, 1975

NYQUIST ISSUES SHOW CAUSE ORDERS  
IN MOUNT VERNON AND NEWBURGH  
SCHOOL INTEGRATION CASES

Commissioner of Education Ewald B. Nyquist today announced that he has issued orders directing the parties in school integration cases involving Mount Vernon and Newburgh to show cause why specified steps should not be taken to promote racial integration in the public schools in the two cities.

Both orders are returnable before the Commissioner in the Regents Room in the State Education Building in Albany. Arguments in the Mount Vernon case will be heard on Thursday, August 14 at 1:00 p.m., and in the Newburgh case on Thursday, August 21 at 1:00 p.m.

Neither order requires the reassignment of students, not already reassigned by the respective boards of education, until the 1976-77 school year. The Commissioner also pointed out that while neither plan directs that any student be transported to school, the boards of education will be free to provide transportation to students who are not now transported in accordance with whatever criteria the boards may determine to be necessary or desirable.

In the Mount Vernon case, the show cause order is based upon an integration plan submitted by the board of education, which provides for organization of the district into two "areas" for educational purposes, with each area including portions of the city's predominantly

(over)

Exhibit 1



white and predominantly minority sections; the construction of a new elementary school; the development of a Center for Creative Education as a "magnet" school; and continuation of the district's open enrollment program.

The Newburgh order sets forth a plan developed by the State Education Department, under which one school, with 82% minority enrollment, would be closed at the end of the 1975-76 school year, and its students reassigned to other schools; and reassignments of students attending ten other schools would be made to reduce serious segregation in two of them (99.8% and 80.4% respectively). Seven schools in the district would be unaffected by the plan.

Both orders provide that a local grievance procedure be made available to any parents who believe that their child's school assignment, under the Commissioner's order, imperils, contravenes or denies the child's right to health, safety and quality education.

The Commissioner had previously announced proposed integration plans for Mount Vernon and Newburgh, and for Buffalo, Lackawanna and Utica, and had scheduled oral argument in each case. The return dates of all five orders were subsequently postponed to permit a review of the plans set forth in those orders in light of a policy statement on school integration adopted by the Board of Regents in February, 1975. The plans contained in the current orders to show cause reflect that review, and also reflect continuing discussions between representatives of the State Education Department and the Mount Vernon and Newburgh boards of education and their administrative staffs.

(more)

The Commissioner stated that the earlier integration plans involving Buffalo, Lackawanna and Utica are still under review and will be announced when the reviews are completed.

- 30 -

NOTE TO EDITORS: Copies of the orders in each case may be obtained upon request from the Office of Public Information.







NO. 9057

# **The University of the State of New York.**

## **The State Education Department**

**Before the Commissioner**

IN THE MATTER

of the

City School District of the City of  
Newburgh, with regard to racial  
integration of its schools.

---

Demov, Morris, Levin and Shein.....attorneys for respondent

---

On January 14, 1975, I directed respondent to show cause why one of the alternative plans for the racial integration of the Newburgh public schools, as set forth in my January 14 order, should not be implemented. In that order I pointed out that as a result of respondent's failure to take adequate steps to achieve the racial integration of its schools, the State Education Department had developed two alternative plans.

The return date of the January 14 order to show cause was subsequently postponed in order to permit a review of the alternative plans set forth in that order in light of a policy statement on school integration adopted by the Board of Regents in February, 1975. During the course of that review, extensive consultation has taken place between representatives of the State Education Department and the Newburgh board of education and its

Exhibit 2



administrative staff.

That review and consultation have resulted in the development of a further plan for racial integration of the Newburgh public schools. The plan, which is fully set forth in ATTACHMENT A to this order, may be summarized as follows:

Broadway school will be closed at the conclusion of the 1975-76 school year, and its students will be assigned to Chestnut, Meadow Hill and Temple Hill schools.

Four schools in the northern sector of the district will be grouped and their grade organizations changed, effective with the opening of school in September, 1976. Balmville, Fostertown and Gardnertown schools will serve grades K-4. Montgomery school will serve grades 5-6.

Enrollments in three schools in the southern sector of the district (Washington, New Windsor and Vails Gate) will be coordinated, effective with the opening of school in September, 1976, to reduce minority group isolation in Washington Street school. New Windsor and Vails Gate schools will receive K-4 students from Washington, which in the future will serve only grades 5-6, and will serve students from New Windsor and from its own attendance area in these grades who would otherwise be assigned to South Junior High School.

The plan is based upon 1974-75 enrollment data. Minor modifications will be necessary to reflect enrollments as of September, 1976. Reassignments from current attendance areas to implement the plan are estimated as follows:

Number of Students

<u>Sending School</u>	<u>Minority</u>	<u>Other</u>	<u>Grades</u>	<u>Receiving School</u>
Broadway	73	68	K-5	Chestnut
Broadway	160		K-5	Meadow Hill
Broadway	80		K-5	Temple Hill
Montgomery	200	1	K-4	Balmville
Fostertown		45		Balmville
Montgomery	150		K-4	Fostertown
Montgomery	186		K-4	Gardnertown
Balmville	6	130	5-6	Montgomery
Fostertown	6	91	5-6	Montgomery
Gardnertown	1	159	5-6	Montgomery
Washington	188	58	K-4	New Windsor
Washington	50		K-4	Vails Gate
New Windsor	27	141	5-6	Washington
	<u>1127</u>	<u>693</u>		

It should be noted that the integration plan set forth in ATTACHMENT A assumes that respondent will wish to provide transportation between home and school for some students who are not presently being transported. However, the plan does not require that any student be transported. Respondent will be free to provide transportation in accordance with whatever criteria it may determine to be necessary or desirable.

In the final order concerning the foregoing plan, to be issued following the return date of this order, I shall direct respondent to establish a local grievance procedure for parents who believe that the rights of their children to health, safety



and quality education have been imperiled, contravened or denied as a result of their school assignment in accordance with the terms of such final order. That grievance procedure will be as set forth in my prior order in this matter, dated January 14, 1975. The parties will have an opportunity, upon the return date of this order, to express their views concerning the proposed grievance procedures.

IT IS HEREBY ORDERED that the respondent Board of Education of the City School District of the City of Newburgh show cause before me on the 21st day of August , 1975 at 1:00 p.m. in the Regents Room at the State Education Building at Albany, why such board should not be directed to implement the foregoing plan for the racial integration of its schools, as more fully set forth in ATTACHMENT A.

IN WITNESS WHEREOF, I, Ewald B. Nyquist,

Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 25<sup>th</sup> day of July , 1975.



*Ewald B. Nyquist*  
Commissioner of Education

## A PLAN FOR THE RACIAL INTEGRATION OF THE NEWBURGH PUBLIC SCHOOLS

### A. The Closing of Broadway School

#### 1. General Information

Broadway School is one of the older schools in the district and is located on a restricted site. It is the second most racially-isolated school in the district, with a minority enrollment of 82.2 percent. This plan provides for the closing of Broadway School at the conclusion of the 1975-76 school year.

#### 2. Current Data

Students in grades K-5 who live within the Broadway School attendance area are to be reassigned. Data concerning the schools which will receive Broadway students are set forth below. In the case of Chestnut School, present enrollments include 46 special education students, 30 of whom are minority. The student body (other than special education students) is only 13.5 percent minority.

<u>School</u>	<u>Minority Enrollment</u>	<u>"Other" Enrollment</u>	<u>Total Enrollment</u>	<u>Percent Minority</u>	<u>Building Capacity</u>	<u>Percent Utilization</u>
Chestnut	50	144	196	25.8	328	59.8
Meadow Hill	204	1,083	1,287	13.4	1,320	97.5
Temple Hill	322	986	1,308	21.4	1,320	99.1

#### 3. Reassignments Required

The 46 special education students presently attending Chestnut School should be assigned to other schools. The data for Chestnut shown below do not include any special education students. Data on elementary special education students for the district under this plan are included in Section E. Temple Hill will receive an additional 25 special education students. Reassignments necessary to effect the closing of Broadway School are as follows.



Receiving School	Students from Broadway		Revised Enrollments			Percent Minority	Percent Utilization
	Minority	"Other"	Minority	"Other"	Total		
Chestnut	73	68	93	196	289	32.1	88.1
Meadow Hill	160		279	1,042	1,321	21.1	100.1
Temple Hill	80		316	945	1,261	25.1	95.5
(Including Spec. Education)			330	956	1,286	25.7	97.4

#### 4. Other Information

Meadow Hill and Temple Hill Schools currently enroll 253 students in grades five and six who reside in the Gardnertown and Montgomery attendance areas. Part B of this plan provides for these students to attend Montgomery School, so they are not included in the revised enrollment data shown above for Meadow Hill and Temple Hill Schools.

### B. Grouping of Montgomery, Balmville, Fostertown and Gardnertown Schools

#### 1. General Information

In the northern part of the district four schools will be grouped together to achieve integration and more equitable utilization of school facilities. Balmville, Fostertown and Gardnertown will all serve grades K-4. Montgomery will serve grades 5-6. A total of about 171 students from Montgomery and about 82 students from Gardnertown (total of 253) are currently enrolled in the fifth and sixth grades of Temple Hill and Meadow Hill Schools. Under this plan they will attend Montgomery School. This action will make use of excess student spaces in schools in the northern part of the district and make space available elsewhere to facilitate the closing of Broadway School.

## 2. Current Data

The following table sets forth current enrollment data for the four schools. It also reflects, in the lines labeled "Adjusted," students who reside within the Montgomery or Gardnertown attendance areas, but who attended other schools in the 1974-75 school year. The latter are the 253 students currently attending Temple Hill and Meadow Hill Schools who have been referred to previously. Gardnertown currently has 27 elementary and 19 secondary special education students, who are included in the data below. They will be assigned to other schools in the district under this plan.

<u>School</u>	<u>Minority Enrollment</u>	<u>"Other" Enrollment</u>	<u>Total Enrollment</u>	<u>Percent Minority</u>	<u>Building Capacity</u>	<u>Percent Utilization</u>
Montgomery	578	1	579	99.8	756	76.6
Adjusted	749	1	750	99.9	756	99.2
Balleville	13	369	382	1.3	467	81.8
Fostertown	19	324	343	3.8	370	92.7
Gardnertown	30	416	446	6.7	432	103.2
Adjusted	30	498	528	5.7	432	122.2

## 3. Reassignments Required

In addition to students in grades 5 and 6 who live within its present attendance area, Montgomery will serve older elementary special education students. Data for that school reflect the enrollment of 48 special education students from throughout the district. It is assumed this group will reflect the districtwide average for special education students which is 56 percent minority. Students in grades K-6 who reside in the current attendance areas of the four schools will be assigned as follows:



School and Grades	Source of Students <sup>1</sup> (Existing K-6 Attendance Areas)				Total Enroll.	%	%
	Montgomery	Balmville	Fostertown	Gardnertown			
Montgomery - 5-6 (With Special Ed.)	212 (0)	6 (130)	6 (91)	1 (159)	605 653	37.3 38.6	80.2 86.4
Balmville - K-4	200 (1)	7 (239)		( 45)	492	42.1	103.4
Fostertown - K-4	150 (0)		13 (233)		396	41.2	107.6
Gardnertown - K-4	186 (0)			12 (265)	463	42.7	107.2

#### A. Other Information

Currently, Montgomery School has a minority enrollment of 99.8 percent, while its immediate and contiguous neighbor, Balmville, has a minority enrollment of 1.3 percent. Currently, building utilization in the four schools identified above ranges from 76 to 103 percent. The range will be about the same after the restructuring of grades to accomplish integration. The slight overcrowding in the three K-4 schools is expected to be corrected within a year or two because of declining enrollments. During the past six years there have been average annual reductions in enrollment as follows: Balmville - 5.6 percent; Fostertown - 3.5 percent; and Gardnertown - 7.8 percent. In the future, and as space becomes available in schools with lower minority enrollments, additional schools may be brought into this grouping plan to further reduce minority enrollments in these four schools.

#### C. Reduction of Minority Group Isolation in Washington Street School

##### 1. General Information

Washington Street School is the remaining school which is substantially segregated. It has a minority enrollment of 80.4 percent. The building was constructed in 1957. It currently serves grades K-4. Two other schools, New Windsor (K-6) and Vails Gate (K-4) are involved in the integration of Washington Street School.

<sup>1</sup>Minority students are indicated first, followed by "other" students shown in parentheses.

## 2. Current Data

The following current data were used in planning for the reassignment of students:

<u>School</u>	<u>Minority Enroll.</u>	<u>"Other" Enroll.</u>	<u>Total Enroll.</u>	<u>Percent Minority</u>	<u>Building Capacity</u>	<u>Percent Utilization</u>
Washington	238	58	296	80.4	320	92.5
New Windsor	68	485	553	9.8	648	85.3
Vails Gate	47	415	462	5.6	458	100.9

## 3. Reassignments Required

Washington School will serve grades 5-6. It will serve 110 students (all students in grades 5-6 residing within its present attendance area), who currently attend South Junior High School. New Windsor and Vails Gate Schools will serve grades K-4.

Students in grades K-6 who reside in the attendance areas of the three schools will be assigned as follows:

<u>School and Grades</u>	<u>Sources of Students<sup>1</sup> (Existing Attendance Areas)</u>			<u>Total Enroll.</u>	<u>% Min.</u>	<u>% Util.</u>
	<u>Washington</u>	<u>New Windsor</u>	<u>V. Gate</u>			
Washington-5-6	88 (22)	27 (141)		278	41.4	89.7
N. Windsor-K-4	188 (58)	41 (344)		631	36.3	97.4
Vails Gate-K-4	50 (0)		47 (415)	512	18.9	111.8

## 4. Other Information

It should be noted that Vails Gate will be utilized at 111.8 percent of current listed capacity. It has enrolled as many as 671 students. Its enrollment decreased by 57 between 1973-74 and 1975-76. If the enrollment of 512 is reached and is excessive, a minor boundary adjustment with Temple Hill could relieve the situation.

<sup>1</sup>The first numbers represent minority students. The numbers in parenthesis represent "other" students.



Students in grades 5-6 who reside in the Vails Gate attendance area will continue to attend Temple Hill for those grades.

D. Schools Not Affected

This plan is directed toward eliminating segregation in the three schools which present the most serious problems of segregation. Eight other schools with lower minority enrollments are involved in the plan. Seven other schools, however, are not affected. They are identified and enrollment data for 1974-75 are as follows:

<u>School</u>	<u>Minority Enrollment</u>	<u>Other Enrollment</u>	<u>Total Enrollment</u>	<u>Percent Minority</u>
Gidney Avenue	274	280	554	49.5
Liberty Street	85	214	299	28.4
Union Grove	84	190	274	30.7
West Street	119	246	365	32.6
North Junior High School	362	786	1148	31.5
South Junior High School	412	734	1146	36.0
Newburgh High School	668	2033	2701	24.7

E. Special Education (Elementary Ungraded)

Only three of the sixteen schools which have served 5-6 regular students have also served special education students. It is apparent that the district has placed special education students where they have had room for them. The distribution of special education students in 1974-75 was as follows:

<u>School</u>	<u>Number of Special Education</u>
Chestnut	46
Gardnertown	27
Gidney Avenue	<u>95</u>
TOTAL	168

It is assumed that special education students require at least twice as much classroom space as regular students. Since nearly all of them are transported to school the location of facilities is not critical. A proposed distribution of special education students for 1976-77 is as follows:

<u>School</u>	<u>Projected Enrollment of Regular Students</u>	<u>Building Capacity</u>	<u>Excess Student Spaces</u>	<u>Number Special Education Assigned</u>
Montgomery	605	756	151	48
Temple Hill	1261	1320	59	25
Gidney Avenue	<u>554</u>	<u>756</u>	<u>202</u>	<u>95</u>
TOTALS	1455	1840	385	168

Additional flexibility in the assignment of special education students is provided by 119 surplus student spaces in Chestnut, Washington, New Windsor and Liberty Street Schools. The 19 secondary special education students who have attended the K-5 Gardnertown School should be assigned to South Junior High School, which serves grades 5-9, which already has special education classes and which will have a reduction in enrollment by the return of 110 students to Washington School, their school of residence. Elementary enrollments in Newburgh were generally on the increase until 1971-72 when 7,712 students were enrolled. There were 583 fewer students in 1974-75 than in 1971-72. An anticipated continuing decline in enrollments should provide additional flexibility for the assignment of special education students.



#### F. Reassignments and Transportation

A total of 1820 students will be reassigned from their current school attendance areas to implement this plan. Of this number, 82 students from the Gardnertown attendance area are already attending other schools, with the result that additional reassignments are reduced to 1738. The district enrollment for 1974-75 was 13,121. The number of reassignments under this plan is 13.2 percent of the total enrollment. The district K-6 enrollment is 7317. Reassignments represent 23.8 percent of the K-6 enrollment.

Many of the students who are to be reassigned are now being transported to school. It is estimated that 1491 students will be eligible for state-reimbursed transportation, but only about 816 of these are not already being transported. Some students who are currently transported will have longer rides to school. In 1973-74 Newburgh transported 8530 students to school. Under this plan, the number of students to be transported is expected to increase to 9346. The additional 816 students will represent 8.7 percent of the total. The per-student cost for transportation in 1973-74 was \$101.88. It is estimated that the cost of transportation in 1976-77 will be \$130.00 per student. The cost for transporting the additional 816 students for the same distances would be \$106,080. Inasmuch as some students already being transported will have longer rides the total estimated cost is \$120,000. Most of this amount will be eligible for 90 percent state reimbursement, so that the additional cost to the district is estimated to be about \$12,000 per year.

It is estimated that no student will have to be transported more than 6.3 miles and that the maximum time involved would be one-half hour. The average distance is estimated to be three miles with an average time of twenty minutes.

G. Estimated Potential Savings in the Closing of Broadway School

Savings in Administration

Salary of Principal (1) - \$23,000

Salary of Clerk (1) - 7,500

Savings in Operations, Maintenance, Fixed Charges

Utilities - 12,000

Maintenance - 10,000

Salary of Custodian (1) - 10,000

Insurance - 5,000

TOTAL ESTIMATED SAVINGS - \$67,500

This estimate is based on no reduction in teaching staff, assuming the district would wish to retain its current pupil-teacher ratio. Savings in the administrative and custodial staff may not be immediate because of employment commitments.

It is possible that the Broadway School building and site could be sold. If sold for private use, the real property would become taxable and therefore increase revenues to the district.

H. Preparation for Integration

Integration involves more than the reassignment of children. If quality integration is to be provided for all students, the district must make detailed plans in advance. By September 15, 1975, the Board of Education of the City School District of the City of Newburgh will be required to present to me a plan of action for carrying out critical steps in preparation for the reassignment of students in September, 1976. These steps should address at least the following areas and the plan should include a detailed calendar for their accomplishment. In addition, specific details of the district plan for preparing for integration will be reported to me on a bimonthly basis commencing



October 15, 1975. These reports will include accomplishments up to the date of submission, plans for the next bimonthly period, and long-range plans to provide quality integrated education for the students of the district. The district plan to be submitted to me by September 15, 1975, shall include details for implementing the following:

1. A series of orientation meetings to be held on a school-by-school basis. They should provide an opportunity for every segment of the community and for all parents to be fully informed of the content of the plan, the general philosophical underpinnings for integration, and the sequence of activities to achieve integration goals. Meetings should continue throughout the year. Citizens should have ample opportunity to contribute their thinking to the integration effort.
2. A district curriculum committee should be organized for the following purposes: examination of present curricula for suitability, comprehensiveness and effectiveness in serving the children and youth of the district; development and utilization of curricula which enhance racial-ethnic understanding and develop positive self-concepts of all students; development of recommendations for district level changes in curricular and instructional approaches where deemed desirable; and implementation of changes which have been approved.
3. Each school should also have a curriculum committee to serve the individual school in the same manner as the district committee serves the district. At least one representative of each school committee should serve on the district curriculum committee, thus providing opportunity for presenting progress reports, sharing information, and contributing to district level curriculum recommendations.

4. During 1975-76, the equivalent of at least four days should be devoted to staff development in preparation for integration. Programs should include issues related to school integration, intergroup relations, the importance of adapting instruction to the individual needs and capabilities of students, and the importance of developing positive self-concepts in students. The school calendar should be developed to provide special conference days or released time for the equivalent of those four days. Attendance by all school personnel should be mandatory. This process should be repeated during the 1976-77 school year. During that year, special emphasis should be given to the identification and resolution of problems which may have developed as a result of integration.
5. In addition to staff development activities indicated above, a series of seminars for staff development purposes should be scheduled for both the 1975-76 and 1976-77 school years. These seminars should be devoted to specific concerns and interests relating to integration. Special seminars for administrators should be convened, and building principals and central office personnel should be expected to participate actively. Seminars should be held on a continuing basis during 1975-76 and 1976-77.
6. Children who will be reassigned should be provided an opportunity to become familiar with the school which they will be attending. Particular emphasis should be given to the location of physical facilities, means of ingress and egress, and school codes and rules. They should have the opportunity to become acquainted with staff members who will serve them and with other students who will be their new classmates. Instruction should be provided in the philosophy underlying the integration



effort. Children in the district who are not directly affected by this plan should be provided with a positive orientation as to what is taking place and the reasons for the actions that are being taken.

Technical assistance and consultant services will be available to the school district from the State Education Department, particularly the Division of Intercultural Relations. Services may also be available from the General Assistance Center at Teachers College, Columbia University, the State University College at New Paltz, Marist College, Vassar College and other institutions in the general geographic area in which Newburgh is located. Some funding possibilities for the district are available through the Emergency School Aid Act and Title IV of the Civil Rights Act of 1964. The Division of Intercultural Relations in Education can also be helpful in providing or funding consultant services, and assisting in the preparation of applications for funding.



No. 9055

# **The University of the State of New York.**

## **The State Education Department**

**Before the Commissioner**

IN THE MATTER

of the

Appeal of JEFFREY LLOYD KING et al.  
from failure of the Board of Education of the City School District of the City of Mount Vernon, to act in relation to racial imbalance and the provision of equal educational opportunity.

---

James I. Meyerson, Esq..... ...attorney for petitioners

Demov, Morris, Levin & Shein, Esqs..attorneys for respondent  
Joel J. Spector, Esq., of counsel

---

On January 14, 1975, I directed respondent to show cause what, if any, additional personnel, facilities or services would be essential to implement the order in this proceeding issued by then Commissioner James E. Allen, Jr. on June 13, 1968, as amplified by my order of January 14, 1975.

The return date of the January 14 order to show cause was subsequently postponed in order to permit a review of the plan set forth in that order in light of a policy statement on school integration adopted by the Board of Regents in February, 1975. During the course of that review, extensive consultations have taken place between representatives of the State Education

Exhibit 3



Department and the Mount Vernon board of education and its administrative staff.

Those discussions have resulted in a proposal by the Mount Vernon board of education to implement four basic steps to achieve racial integration in its schools. Those steps, as proposed by the board, are set forth in the attached letter, dated July 3, 1975, from William C. Parattella, respondent's superintendent of schools (ATTACHMENT A).

Respondent's proposal represents a plan for increasing racial integration in its schools, and I have therefore determined<sup>3</sup> to offer both the petitioner in this proceeding and the respondent an opportunity to comment upon the proposal.

In a subsequent order in this matter, to be issued following the return date of this order, I shall also direct respondent<sup>3</sup> to establish a local grievance procedure for parents who believe that the rights of their children to health, safety and quality education have been imperiled, contravened or denied as a result of their school assignment in accordance with the terms of such further order. That grievance procedure will be as set forth in my prior order in this matter, dated January 14, 1975. The parties will have an opportunity, upon the return date of this order, to express their views concerning the proposed grievance procedures.

IT IS HEREBY ORDERED that the petitioners herein and the respondent Board of Education of the City School District of the City of Mount Vernon show cause before me on the 14th day of August, 1975 at 1:00 p.m. in the Regents Room in the State Education Building at Albany, why respondent should not be directed to implement the plan set forth in ATTACHMENT A to this order.



IN WITNESS WHEREOF, I, EWALD B. NYQUIST,  
Commissioner of Education of the  
State of New York, for and on behalf  
of the State Education Department, do  
hereunto set my hand and affix the  
seal of the State Education Department,  
at the City of Albany, this *25th* day of  
*July*, 1975.

*Ewald B. Nyquist*  
\_\_\_\_\_  
Commissioner of Education





FOR RELEASE FRIDAY, NOVEMBER 14, 1975

NYQUIST ISSUES SHOW CAUSE ORDER  
IN LACKAWANNA SCHOOL  
INTEGRATION CASE

Commissioner of Education Ewald B. Nyquist today announced that he has issued an order directing the parties in a school integration case involving the Lackawanna city school district to show cause why specified steps should not be taken to promote racial integration in the public schools in that city.

The order is returnable before the Commissioner in the Regents Room of the State Education Building in Albany on Monday, December 1 at 1:30 p.m.

The plan set forth in the order does not require the reassignment of students, not already reassigned by the board of education, until the 1976-77 school year. The Commissioner pointed out that while the plan does not direct that any student be transported to school, the board of education will be free to provide transportation to students who are not now transported in accordance with whatever criteria the board may determine to be necessary or desirable.

The plan recognizes that the board of education closed the Wilson elementary school, which was the most heavily minority segregated school in the city, in June, 1975 and reassigned its students to the Truman school.

The plan also reflects the fact that the board of education earlier this year set aside its plans to construct an intermediate

(more)



school which would have facilitated racial integration in all the schools of the district.

Pending the possible construction of an intermediate school in the future, the plan set forth in the Commissioner's order provides that one additional school, the Beth Park school, be closed and its students reassigned, and that assignments to six other schools be modified.

The Commissioner pointed out that the plan would reduce minority enrollment in the most heavily segregated school from the present 95% to 42%, while enabling the school district to save an estimated \$74,000 annually, commencing in the second year, as a result of the closing of the Beth Park school and additional State aid for transportation.

The order also provides that a local grievance procedure be made available by the Lackawanna board to any parents who believe that their child's school assignment, under the Commissioner's final order to be issued after oral argument on the plan, imperils, contravenes or denies the child's right to health, safety and quality education.

The Commissioner had previously announced a proposed integration plan for Lackawanna and had scheduled oral argument on that plan. The return date of that order was subsequently postponed to permit a review of the plan set forth in the order in light of a policy statement on school integration adopted by the Board of Regents in February, 1975. The plan contained in the current order to show cause reflects that review, and also reflects continuing discussions between representatives of the State Education Department and the Lackawanna board of education and its administrative staff.

(more)

The Commissioner stated that the earlier integration plans involving Buffalo and Utica are still under review, and that orders to show cause will be issued in those cases when the reviews are completed. He also announced that final orders in cases involving Mount Vernon and Newburgh will be issued shortly.

- 30 -

NOTE TO EDITORS: Copies of the Lackawanna order may be obtained upon request from the Office of Public Information.







NO 9136

**The University of the State of New York.**  
**The State Education Department**  
**Before the Commissioner**

IN THE MATTER

of the

Appeal of CLEOLA MAE SYLVERS et al.  
from action of the Board of Educa-  
tion of the City School District of  
the City of Lackawanna in refusing  
to provide integrated and quality  
education in the schools of the  
City School District of the City  
of Lackawanna.

---

George M. Hezel, Esq.....attorney for petitioners  
Peter A. Vinolus, Esq.....attorney for respondent

---

On January 14, 1975, I directed respondent to show cause why the plan for the racial integration of the Lackawanna public schools set forth in my order of April 8, 1974 should not be implemented.

The return date of the January 14 order to show cause was subsequently postponed in order to permit a review of the integration plan set forth in the April 8, 1974 order in light of a policy statement on school integration adopted by the Board of Regents in February, 1975. During the course of that review, extensive consultation has taken place between representatives of the State Education Department and the Lackawanna board of

Exh. 6.1 5



education and its administrative staff.

That review and consultation have resulted in a further plan for racial integration of the Lackawanna public schools. That plan, set forth hereafter, incorporates constructive steps already taken by respondent.

On May 14, 1975, respondent determined to close Wilson elementary school effective at the end of the 1974-75 school year. Wilson was the most minority segregated school in the district and represented the poorest physical facilities being used by the district. Subsequently, respondent took action to assign Wilson students to Truman elementary school effective in September, 1975. I concur with that action.

In 1973, respondent purchased land for the construction of a new high school. Thereafter, it was decided that the high school should remain in the present building, and that the new site should instead be used for the construction of an intermediate school to serve grades 5-8, and respondent retained an architect to conduct initial planning for such a school. The assignment of all students in the district in grades 5 and 6 to a new intermediate school would create sufficient space in the K-4 schools to assign students to those schools in such a way that all K-4 schools would be racially integrated. Respondent's plan to construct an intermediate school could thus have resulted in complete racial integration in all the schools of the district.

Unfortunately, it now appears that respondent has set aside its plans for the construction of an intermediate school.

- 2 -

As a result, and until those plans are reactivated and an intermediate school is in fact constructed, it is essential that other steps be taken by respondent to increase racial integration in its schools. The following plan will accomplish that objective:

A. THE PLAN

1. Respondent has already taken action to close Wilson School and to assign its students to Truman School, effective in September, 1975. That action has resulted in a student body at Truman School which reflects the student population of the district. This plan incorporates that positive action by respondent. Data concerning Truman School with the enrollment of Wilson School added are as follows:

Number of Students

<u>School</u>	<u>Grades</u>	<u>Minority</u>	<u>"Other"</u>	<u>Total</u>	<u>Percent Minority</u>	<u>Building Capacity</u>
Wilson	K-6	112	7	119	94.1	Closed
Truman	K-6	<u>15</u>	<u>549</u>	<u>564</u>	<u>2.7</u>	<u>783</u>
COMBINED	K-6	127	556	683	18.6	783

2. Beth Park School will be closed and its students assigned to Roosevelt School, effective in September, 1976.
3. Changes will be made in attendance boundaries between Washington and Franklin Schools and between McKinley and Truman Schools in order to equalize building utilization and to make space available in all of the elementary schools in the Second and Third Wards of the City to assist in the integration effort.



4. Students will be reassigned approximately as indicated below, effective in September, 1976. In the assignment process, consideration should be given to assignment of siblings to the same school wherever possible.

#### K-6 Re assignments

Roosevelt will receive 10 minority and 130 "other" students from Beth Park, which will be closed.  
Franklin will receive 100 minority students from Roosevelt.  
Franklin will receive 50 "other" students from Washington.  
Franklin will receive 50 "other" students from McKinley.  
McKinley will receive 50 minority students from Roosevelt.  
Truman will receive 50 "other" students from McKinley.  
Washington will receive 50 minority students from Roosevelt.

#### 7-9 Reassignments

Lincoln will receive 150 "other" students from Hoover.  
Hoover will receive 150 minority students from Lincoln.

Table I sets forth data projected to the 1976-77 school year reflecting implementation of this plan. Assignment of special education students is included. After implementation, minority enrollments in the elementary and junior high schools of the district are projected to range from 13.4 percent to 42.0 percent, as contrasted with minority enrollments in 1974-75 which ranged from 1.4 percent to 95.6 percent. Roosevelt School, which will have the highest percentage of minority enrollment, will have a substantial number of Spanish-speaking students. That school should provide bilingual programs for all elementary students in the district who need them.

#### B. ESTIMATED ADDITIONAL COSTS AND SAVINGS

1. While this plan does not require that any student be transported between home and school, it is assumed that respondent will wish to provide some reassigned students with transportation. An estimate of the methods by which

reassigned students will get to school is as follows:

Additional students who might be transported	200
Transportation changed to a different school	250
Students who will walk	<u>340</u>
TOTAL STUDENTS REASSIGNED	790

The transportation of the 200 students who are not currently transported will qualify for the normal 90 percent State reimbursement. Many of the 250 students whom the district is presently transporting do not qualify for State reimbursement. When these students are reassigned pursuant to this plan, most of them will qualify for State reimbursement.

Additional transportation costs during the first year of implementation of this plan are estimated as follows:

200 additional students at \$130 per student	- \$26,000
250 students (changed schools) at \$40 per student	- <u>10,000</u>

ESTIMATED ADDITIONAL TRANSPORTATION COST      \$36,000  
(First year only)

During the second year of implementation, increased State reimbursement should result in an estimated decrease in local tax revenues required for transportation of \$16,650.

2. Savings to be realized by the district from the closing of the Beth Park School are estimated as follows:

Salary of principal	- \$20,000
Salary of clerk	- 7,500
Salary of custodian	- 10,000
Utilities	- 10,000
Maintenance	- 7,500
Insurance	- <u>3,000</u>
TOTAL ESTIMATED SAVINGS	- \$58,000



This estimate assumes no reduction in teaching staff, on the assumption that respondent will wish to maintain its present pupil-teacher ratio.

It is possible that the Beth Park site can be sold for private use. In that event, the real property would become taxable, with a resulting increase in revenue to the district.

C. PREPARATION FOR INTEGRATION

Integration involves far more than the reassignment of children. If quality integrated education is to be provided for all students, the district must make careful and detailed plans in advance. By February 2, 1976, respondent shall submit to me, with a copy to petitioners' attorney, a plan of action for carrying out certain essential steps in preparation for the reassignment of students in September, 1976. These steps should address at least the areas identified hereafter, and the plan should include a detailed calendar for their accomplishment. In addition, progress reports will be submitted to me, with copies to petitioners' attorney, on a bimonthly basis commencing March 1, 1976. Those reports shall include actions taken to the date of submission, plans for the next bimonthly period, and long-range plans to provide quality integrated education for the students of the district. The plan to be submitted, by February 2, 1976, shall include details for implementing the following:

1. A series of orientation meetings should be held on a school-by-school basis. They should provide an op-

portunity for every segment of the community and for all parents to be fully informed of the content of the plan, and the sequence of activities to achieve integration goals. Meetings should continue throughout the year. Citizens should have ample opportunity to contribute their thinking to the integration effort.

2. A district curriculum committee should be organized for the following purposes: examination of present curricula for suitability, comprehensiveness and effectiveness in serving the children and youth of the district; development and utilization of curricula which enhance racial-ethnic understanding and develop positive self-concepts of all students; development of recommendations for district level changes in curricular and instructional approaches where deemed desirable; and implementing changes which have been approved.
3. Each school should also have a curriculum committee to serve the individual school in the same manner that the district committee serves the district. At least one representative of each school committee should serve on the district curriculum committee, thus providing opportunity for presenting progress reports, sharing information, contributing to district level curriculum recommendations, and providing leadership for implementation of curriculum changes in the individual school.
4. During the 1975-76 school year, the equivalent of at least four days should be devoted to staff development



in preparation for integration. Programs should include issues related to school integration, intergroup relations, the importance of adapting instruction to the individual needs and capabilities of students, and the importance of developing positive self-concepts in students. Attendance by all school personnel should be mandatory. This process should be repeated during the school year 1976-77. During that year, special emphasis should be given to the identification and resolution of problems which may have developed as a result of integration.

5. In addition to the staff development activities indicated above, a series of seminars for staff development purposes should be scheduled for both the 1975-76 and 1976-77 school years. These seminars should be devoted to specific concerns and interests relating to integration. Special seminars for administrators should be convened, and building principals and central office personnel should be expected to participate actively. These seminars should be held on a continuing basis during 1975-76 and 1976-77.
6. Students who will be reassigned should be provided an opportunity to become familiar with the school which they will be attending. Particular emphasis should be given to the location of physical facilities, means of ingress and egress, and school codes and rules. Students should have the opportunity to become acquainted

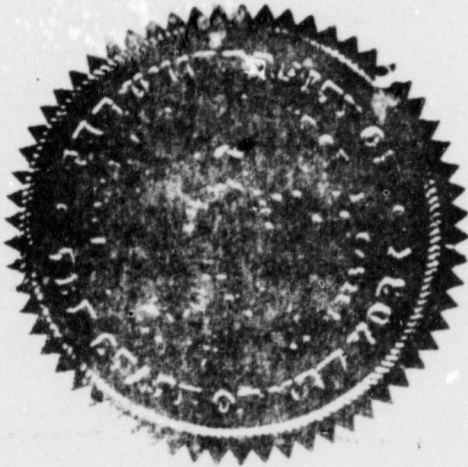
with staff members who will serve them and with other students who will be their new classmates. Children in the district who are not affected by the desegregation plan should be provided with a positive orientation as to what is taking place and the reasons for the actions that are being taken.

Technical assistance and consultant services will be available to the school district from the State Education Department. Services may also be available from the General Assistance Center at Teachers College, Columbia University. Some funding possibilities for the district exist under the Emergency School Aid Act and Title IV of the Civil Rights Act of 1964. The State Education Department can also be helpful in providing or funding consultant services, and in assisting district personnel in the preparation of applications for funding.

In the final order concerning the foregoing plan, to be issued following the return date of this order, I shall direct respondent to establish a local grievance procedure for parents who believe that the rights of their children to health, safety and quality education have been imperiled, contravened or denied as a result of their school assignments in accordance with the terms of such final order. That grievance procedure will be as set forth in my prior order in this matter dated January 14, 1975. The parties will have an opportunity, upon the return date of this order, to express their views concerning the proposed grievance procedure.



IT IS HEREBY ORDERED that the petitioners herein and the respondent Board of Education of the City School District of the City of Lackawanna show cause before me on the 1st day of December, 1975 at 1:00 p.m. in the Regents Room in the State Education Building at Albany, why respondent should not be directed to implement the plan set forth in this order.



IN WITNESS WHEREOF, I, Ewald B. Nyquist,  
Commissioner of Education of the  
State of New York, for and on behalf  
of the State Education Department, do  
hereunto set my hand and affix the  
seal of the State Education Depart-  
ment, at the City of Albany this 12th  
day of November, 1975.

*Ewald B. Nyquist*  
Commissioner of Education

TABLE I  
LACKAWANNA CITY SCHOOL DISTRICT  
PROJECTED ENROLLMENTS FOR 1976-77 REFLECTING STUDENT REASSIGNMENTS<sup>1</sup>

Schools	Grade	Regular Minority Enrollments		Regular "Other" Enroll.	Total Regular Students	Total Spec. Ed. Students	Total Enrollment	Building Capacity	Percent Utilization
		Number	Percent						
Franklin	K-6	110	18.5	485	595	34	629	685	91.8
McKinley	K-6	56	13.4	562	418	9	427	462	92.4
Roosevelt	K-6	168	42.0	232	400	44	444	664	66.9
Truman	K-6	118	19.1	498	616	24	640	783	81.7
Washington	K-6	62	14.1	378	440		440	447	98.4
Total	K-6	514	20.8	1,955	2,469	111	2,580	3,041	84.8
Lincoln Jr. High	7-9	140	38.6	223	363	9	372	420	88.6
Hoover Jr. High	7-9	174	20.8	662	836	24	860	875	98.3
Total	7-9	314	26.2	885	1,199	33	1,232	1,295	95.1

<sup>1</sup>Enrollments reflect 1974-75 data. Actual enrollments in 1976-77 are expected to be less than shown because of the decline in enrollment trends. There has been an average annual decrease in elementary (K-6) enrollments of 6 percent during the past 5 years, reaching a 9.3 percent decline between 1973-74 and 1974-75.







NO 9145

**The University of the State of New York**  
**The State Education Department**  
Before the Commissioner

IN THE MATTER

OF

Appeal of JEFFREY LLOYD KING, et al.,  
from failure of the Board of Education  
of the City School District of the  
City of Mount Vernon, to act in relation  
to racial segregation and the provision  
of equal educational opportunity.

---

James I. Meyerson, Esq.....attorney for petitioners  
Demov, Morris, Levin & Shein, Esqs.....  
.....attorneys for respondent  
Joel J. Spector, Esq., of Counsel

---

In its most recent policy statement on racial integration in the schools, issued on February 20, 1975, the Board of Regents affirmed its conviction that "equal opportunity for high quality education is the right of every pupil in the public schools of this State, regardless of race, creed or color," and stated that the Regents expect every school district to take those steps necessary to enable every pupil to enjoy that primary right..."

My efforts, and those of my predecessor - extending over a period of years - to alleviate racial segregation and enhance equality of educational opportunity in Mount Vernon met with stubborn resistance on the part of the predecessors of the present board of education.



However, in July of this year, the board of education, after extensive consultation with representatives of the State Education Department, proposed a plan for pursuing those objectives. That plan may be summarized as follows:

Respondent will establish an area concept which will group the schools of the district into two geographical units, based on a division of the district into an eastern and a western portion, for purposes of administration, programs and extracurricular activities. Teachers will be assigned to one of the two areas, rather than to specific schools, and will serve in whatever school within an area requires their talents.

A new Lincoln school will be built to replace the present building, which is old and inadequate.

The Grimes elementary school, which presently serves an overwhelmingly black student population, will be converted to a "magnet school", designed to attract students from all sections of the district, with a goal of 50% minority enrollment.

The existing open enrollment program will be continued, with increased spaces to be made available for open enrollment students in the new Lincoln school and in the Grimes school.

On July 25, 1975, I directed petitioners and respondent to show cause why respondent should not be required to implement the plan. Oral argument was heard on August 14, 1975, and the parties were afforded a full opportunity to present their views.

Petitioners oppose the plan, primarily on the contention that it will not sufficiently alter the present disparity in the racial composition of the student bodies of several schools in the district. Petitioners' arguments, however, overlook two important factors.

First, the Board of Regents has expressed its belief, and has established as educational policy in this State, that appro-

priate means to achieve high quality education for all pupils include such techniques as optional transfer programs and open enrollment, expansion of "magnet" and specialized schools, and programs and curricula which enhance interracial understanding. Each of those ingredients is present in respondent's plan.

Second is the fact that the plan has been proposed by the board of education. It has consistently been and continues to be my belief that efforts to achieve quality integrated education in the public schools can best be achieved through the voluntary efforts of local school authorities, working in close cooperation with the communities they serve. I have sought to elicit voluntary action at the local level in every case which has come before me through the appeal process, including this one, and staff of the Education Department work continuously to assist school districts throughout the State in developing and implementing voluntary techniques for reducing or eliminating racial segregation in the schools and improving the quality - and equality - of educational opportunity.

There is no single integration technique or model which is right for all school districts. There is no perfect or ideal integration scheme. The plan proposed by the Mount Vernon board of education is certainly not without flaw. But I am convinced that it can be an important step in the right direction - a step which, if managed carefully, faithfully and with integrity by the board of education and its staff, can chart a course for continuing improvement through voluntary action at the local level.



I am not unmindful that it has taken many years, inordinate effort and extensive litigation to reach the point at which a Mount Vernon board of education has reacted positively to the imperative of equal educational opportunity. And I am aware that the adequacy of the steps now proposed by this board of education can be evaluated fully only when they have been fully implemented.

Nevertheless, I am persuaded that the proposals summarized above have merit, and should not be rejected - or found inadequate - until their effectiveness can be judged in the light of experience. I shall therefore afford the Mount Vernon board of education an opportunity to undertake the steps which will provide the basis for such a judgment.

As those steps are taken, extensive communication with and involvement of parents, students, teachers and other staff is an absolutely essential ingredient.

Orientation sessions for parents must be held, at convenient locations throughout the city, to acquaint them with all aspects of the plan, to answer any questions they may have, and to solicit their suggestions.

Students who transfer from one school to another must be given an advance opportunity to become familiar with the new school, and with the staff members who will serve them and the students who will be their new classmates.

Curriculum committees must be organized for each of the two new areas, with representation from each school in the area, to

develop curricula designed to enhance interracial understanding and to develop positive self-concepts on the part of all students.

An organized program of staff development must be initiated, with emphasis on intergroup relations, methods of adapting instruction to the individual needs and capabilities of students, and techniques for developing positive self-concepts.

Technical assistance and consultant services from the State Education Department will be available to respondent in connection with its implementation of the plan. Similar services may also be available from the General Assistance Center at Teachers College of Columbia University. The State Education Department will also assist respondent in seeking special Federal funding for its integration programs.

IT IS ORDERED that respondent board of education of the City School District of the City of Mount Vernon implement the plan summarized above, as more fully described in Attachment A to my order dated July 25, 1975, and each of the additional steps set forth above, not later than the commencement of the 1976-77 school year; and

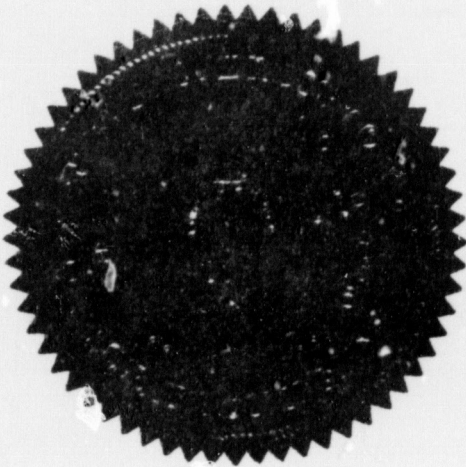
IT IS FURTHER ORDERED that respondent establish a local grievance procedure, incident to the implementation of such plan, for parents who believe that the rights of their children to health, safety and quality education have been imperiled, contravened or denied as a result of their school assignment in accordance with the plan. Such grievance procedure shall provide that respondent will, prior to the assignment of any student to a school other than the one he would otherwise attend, notify the parents



of such student of the proposed reassignment; advise the parents that if they believe that the proposed reassignment would adversely affect their child's health, safety or access to quality education, they may notify the school authorities to that effect, in writing, setting forth the nature and basis of their concerns; determine, in each case in which such a grievance is submitted, whether in the judgment of the respondent board of education or its designated officers or employees the child's health, safety or access to quality education would in fact be impaired; communicate that determination to the parents, in writing; afford the parents an opportunity for a meeting with appropriate school authorities for further discussion, upon written request by the parents; make a final determination upon such grievance, in writing; and submit to me, for approval, a summary of the determinations made by respondent or its designated officers or employees in any grievance submitted; and

IT IS FURTHER ORDERED that respondent submit reports to me, with copies to petitioners' attorney, commencing January 2, 1976, and by the first day of each third month thereafter, setting forth the actions taken thus far pursuant to the plan, the further actions to be taken and the time when each is scheduled to be completed, and respondent's judgment as to the effectiveness of each such action in furthering equality of educational opportunity, together with the bases for such judgment.

JURISDICTION OF THIS MATTER IS HEREBY RETAINED, pending  
my further order.



IN WITNESS WHEREOF, I Ewald B. Nyquist,  
Commissioner of Education of the  
State of New York, for and on  
behalf of the State Education  
Department, do hereunto set my  
hand and affix the seal of the  
State Education Department, at  
the City of Albany, this 1st day  
of December, 1975.

*Ewald B. Nyquist*  
Commissioner of Education







NO 9149

**The University of the State of New York**  
**The State Education Department**  
Before the Commissioner

IN THE MATTER

of the

City School District of the City  
of Newburgh, with regard to racial  
integration of its schools.

---

Demov, Morris, Levin and Shein, Esqs.  
.....attorneys for respondent  
Joel J. Spector, Esq., of counsel

---

In its most recent policy statement on racial integration in the schools, issued on February 20, 1975, the Board of Regents affirmed its conviction that "equal opportunity for high quality education is the right of every pupil in the public schools of this State, regardless of race, creed or color", and stated that "The Regents expect every school district to take those steps necessary to enable every pupil to enjoy that primary right..."

In that same statement, the Regents said:

"The Regents believe that integrated schools are essential to assure that primary right to all pupils residing in racially diverse communities.



We define an integrated school as one in which the racial composition of the student body reflects the pupil population of the school district without necessarily attempting to be proportionate to it, and in which the programs, facilities, and equipment are not racially identifiable. What constitutes a reflection of the population of a school district will depend upon the circumstances in specific situations."

The Regents also expressed their belief that appropriate means to achieve high quality education for all pupils include, where feasible, strategic location of new schools or closing of unneeded schools or both, optional transfer programs and open enrollment, expansion of magnet and specialized schools, compensatory education programs, curriculums which enhance interracial understanding, recruitment of qualified faculty from varied racial and ethnic backgrounds, alteration of school attendance zones where necessary, and in some instances, the judicious and reasonable transportation of pupils with due consideration that the health, safety, and access to high quality education of pupils are not imperiled and with particular consideration that children of elementary school age are not transported for more than moderate distances.

During the 1974-75 school year, minority enrollment in the 18 schools operated by the Newburgh board of education

was approximately 31%, and in the 15 elementary schools was approximately 35%. During the same year, however, minority enrollment in the Montgomery elementary school was 99.8%, in the Broadway elementary school, 82.2%, and in the Washington elementary school, 80.4%. In the other elementary schools, minority enrollment exceeded 50% in only one school and in most schools did not exceed 35%.

While most of the public schools of Newburgh reflect the Regents' definition of an integrated school "as one in which the racial composition of the student body reflects the pupil population of the school district without necessarily attempting to be proportionate of it", the Broadway, Montgomery and Washington schools do not. Those three schools are clearly racially segregated.

Under those circumstances, it is essential to determine what efforts, if any, are being made by the Newburgh board of education to achieve high quality education for the students attending these three schools, through the use of means specifically identified by the Regents as appropriate or through any other effective efforts. Unfortunately, there is no evidence of any such effort. Although boards of



education in Newburgh have in the past taken some steps to reduce racial isolation in their schools, those efforts have not extended to the Broadway, Montgomery and Washington schools.

It has long been and continues to be my conviction that the initial opportunity - and responsibility - to achieve quality integrated education rests with the respective school districts of the State. My commitment to that belief has led me to explore every avenue which might lead to voluntary action on the part of the Newburgh board of education to offer quality integrated education in all the schools of the district. Unfortunately, those efforts have not been successful. This proceeding results from the failure of the board to take effective action on its own initiative.

On July 25, 1975 I directed respondent to show cause why a specified plan for racial integration of the Newburgh public schools should not be implemented. Oral argument on that order was heard on August 26, 1975, and respondent was afforded a full opportunity to present its comments concerning the plan.

The plan, which is annexed hereto as Attachment A, may be summarized as follows:

Broadway school will be closed at the conclusion of the

1975-76 school year, and its students will be assigned to Chestnut, Meadow Hill and Temple Hill Schools.

Four schools in the northern part of the district will be grouped, and their grade organizations changed, effective with the opening of school in September, 1976. Balmville, Fostertown and Gardnertown schools will serve grades K-4. Montgomery school will serve grades 5 and 6.

Enrollments in three schools in the southern part of the district (Washington, New Windsor and Vails Gate) will be coordinated, effective with the opening of school in September, 1976, to reduce minority group isolation in Washington Street School. New Windsor and Vails Gate schools will receive K-4 students from Washington, which in the future will serve only grades 5 and 6, and will serve students from New Windsor and from its own attendance area in these grades who would otherwise be assigned to South Junior High School.

Respondent has chosen to react to the plan in a completely negative way. Rather than suggesting, as it might have done, modifications or alternatives designed to achieve the same objectives, respondent has simply expressed objections, and has not sought to make any positive contribution on the question of how quality integrated education may best be



achieved in the Newburgh city school district.

Although no transportation is directed by the plan, I anticipated in the order to show cause that the respondent board of education would wish to provide transportation for some pupils who are not presently being transported. As pointed out in the order to show cause, "Respondent will be free to provide transportation in accordance with whatever criteria it may determine to be necessary or desirable."

Respondent's principal objection to the plan reveals a gross lack of consistency, for which it offers no explanation. In the last school year, respondent transported 8530, or more than sixty-five percent, of its students between home and school. It provides transportation for all of its students in grades kindergarten through six who reside outside the city limits, no matter how short the distance between home and school. And yet respondent argues that this plan, which could involve the transportation of approximately 816 additional students under respondent's existing transportation policies, to which respondent says it will adhere- an increase of only 8.7% - represents what respondent characterizes as "massive cross busing", and will result in vastly increased transportation expense to the district.

With respect to respondent's use of the term "cross-busing", it need only be pointed out that the plan which is the subject of this proceeding does not provide for an exchange between schools of students of the same age and grade level, as that term implies, but rather contemplates the closing of one school and the reassignment of its students elsewhere, and the restructuring of grade levels in other schools - techniques commonly employed by school districts throughout the State for a variety of valid educational reasons.

Respondent's contention that the extent of student reassignments contemplated by the plan is "massive" is equally unfounded. The number of students to be reassigned is approximately 1820. Since eighty-two students are already attending school outside the attendance area in which they live, this plan involves only 1738 additional students who will attend school outside the attendance area of their residence. That number represents only 13.2% of the district's total enrollment, and 23.8% of the K-6 enrollment. Six schools in the district, including one junior high school and the senior high school, are totally unaffected by the plan.



With respect to respondent's concerns about the cost of transportation, most transportation costs are eligible for 90% State reimbursement. My staff has estimated that the total annual cost of increased transportation as a result of the plan will be \$120,000, with a net cost to the district of approximately \$12,000 after payment of State transportation aid. Respondent's estimate of the cost is considerably higher, but is based on unwarranted assumptions as to the need for additional personnel, and is computed on the basis of the greatest possible travel distances. Respondent has made no convincing demonstration that the estimates developed by my staff are not valid.

It is true that State transportation aid is paid in the year following the year in which the district expense is incurred, but in the long run there need be no additional expense to the Newburgh school district for transportation in connection with this plan. Savings to the district as a result of the closing of the Broadway school, estimated to be \$67,500 annually, will far exceed the net cost of additional transportation.

Respondent further argues that implementation of the plan would require it to select individual children for reassign-

ment on the basis of race. This concern, too, is unfounded. All reassignments will be on the basis of grade level, with the result that no individual selection process is required to determine which youngsters who now attend a given school will be reassigned to another school. Within grade levels, determinations as to the school to which students will be assigned can - and should - be made on the traditional basis of geographical attendance areas to be established by respondent.

Respondent also raises objections to the logistics of the plan. It speculates that problems may result because of lack of consideration of the number of children at each grade level, resulting class size, pupil-teacher ratios, and the relative proportion of boys to girls. Respondent speculates whether it may have to transport children to the nearest school first and then transfer them to other buses for transportation to the assigned school, and wonders if it may then have to hire large numbers of aids to supervise the students during this process.

None of these concerns are peculiar to this - and probably not to any other - plan for school integration. They are matters with which every school district must deal continuously, quite apart from concerns of integration, as the total pupil



population increases - or decreases - and as population shifts occur within a school district. They are simply matters which call for proper planning and competent implementation.

Respondent also asserts that future population shifts and an expected growth in certain areas of the district may render parts of the plan unworkable. Although this plan is rather specific as to initial implementation, it does not impose immutable conditions. Respondent will of course be expected to make future adjustments to take into account population changes and anticipated growth, whether as a result of the development of Stewart Field into a major airport or for other reasons.

Section H of Attachment A to this order stresses the need for careful advance planning and for extensive involvement of the community, curriculum review and revision, staff training and development, and student orientation. The degree of success of this, or any other, effort to achieve quality integrated education will depend heavily on the skill and care with which the board of education and the staff of the district undertake these essential steps.

IT IS ORDERED that the board of education of the City School District of the City of Newburgh implement the plan set forth in Attachment A to this order, with all necessary pupil reassignments to be effective at the commencement of the 1976-77 school year; and

IT IS FURTHER ORDERED that the reports specified in Section H of Attachment A be submitted to me by the dates specified in such section; and

IT IS FURTHER ORDERED that respondent establish a local grievance procedure, incident to the implementation of such plan, for parents who believe that the rights of their children to health, safety and quality education have been imperiled, contravened or denied as a result of their school assignment in accordance with such plan. The grievance procedure shall provide that respondent will, prior to the date for implementation of the plan, identify those students who are to be reassigned to a school other than the one they would otherwise attend; notify the parents of such students of the proposed reassignment; advise those parents that if they believe that the proposed reassignment would adversely affect their child's health, safety or access to quality education, they may notify



the school authorities to that effect, in writing, setting forth the nature and basis of their concerns; determine, in each case in which such a grievance is submitted, whether in the judgment of the respondent board of education or its designated officers or employees the child's health, safety or access to quality education would in fact be impaired; communicate that determination to the parents, in writing; afford the parents an opportunity for a meeting with appropriate school authorities for further discussion, upon written request by the parents; make a final determination upon such grievance, in writing; and submit to me, for approval, a summary of the determinations made by respondent or its designated officers or employees in any grievance submitted; and

IT IS FURTHER ORDERED that jurisdiction of this matter be and the same is hereby retained, pending my further order.



IN WITNESS WHEREOF, I, Ewald B. Nyquist, Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 3rd day of December, 1975.

*Ewald B. Nyquist*  
Commissioner of Education

## A PLAN FOR THE RACIAL INTEGRATION OF THE NEWBURGH PUBLIC SCHOOLS

### A. The closing of Broadway School

#### 1. General Information

Broadway School is one of the older schools in the district and is located on a restricted site. It is the second most racially-isolated school in the district, with a minority enrollment of 82.2 percent. This plan provides for the closing of Broadway School at the conclusion of the 1975-76 school year.

#### 2. Current Data

Students in grades K-5 who live within the Broadway School attendance area are to be reassigned. Data concerning the schools which will receive Broadway students are set forth below. In the case of Chestnut School, present enrollments include 46 special education students, 30 of whom are minority. The student body (other than special education students) is only 13.5 percent minority.

<u>School</u>	<u>Minority Enrollment</u>	<u>"Other" Enrollment</u>	<u>Total Enrollment</u>	<u>Percent Minority</u>	<u>Building Capacity</u>	<u>Percent Utilization</u>
Chestnut	50	144	196	25.8	328	59.8
Meadow Hill	204	1,083	1,287	15.9	1,320	97.5
Temple Hill	322	986	1,308	24.6	1,320	99.1

#### 3. Reassignments Required

The 46 special education students presently attending Chestnut School should be assigned to other schools. The data for Chestnut shown below do not include any special education students. Data on elementary special education students for the district under this plan are included in Section E. Temple Hill will receive an additional 25 special education students. Reassignments necessary to effect the closing of Broadway School are as follows.



Receiving School	Students from Broadway		Revised Enrollments			Percent Minority	Percent Utilization
	Minority	"Other"	Minority	"Other"	Total		
Chestnut	73	68	93	196	289	32.1	88.1
Meadow Hill	160		279	1,042	1,321	21.1	100.1
Temple Hill	80		316	945	1,261	25.1	95.5
(Including Spec. Education)			330	956	1,286	25.7	97.4

#### 4. Other Information

Meadow Hill and Temple Hill Schools currently enroll 253 students in grades five and six who reside in the Gardnertown and Montgomery attendance areas. Part B of this plan provides for these students to attend Montgomery School, so they are not included in the revised enrollment data shown above for Meadow Hill and Temple Hill Schools.

### B. Grouping of Montgomery, Balmville, Fostertown and Gardnertown Schools

#### 1. General Information

In the northern part of the district four schools will be grouped together to achieve integration and more equitable utilization of school facilities. Balmville, Fostertown and Gardnertown will all serve grades K-4. Montgomery will serve grades 5-6. A total of about 171 students from Montgomery and about 82 students from Gardnertown (total of 253) are currently enrolled in the fifth and sixth grades of Temple Hill and Meadow Hill Schools. Under this plan they will attend Montgomery School. This action will make use of excess student spaces in schools in the northern part of the district and make space available elsewhere to facilitate the closing of Broadway School.

## 2. Current Data

The following table sets forth current enrollment data for the four schools. It also reflects, in the lines labeled "Adjusted," students who reside within the Montgomery or Gardnertown attendance areas, but who attended other schools in the 1974-75 school year. The latter are the 253 students currently attending Temple Hill and Meadow Hill Schools who have been referred to previously. Gardnertown currently has 27 elementary and 19 secondary special education students, who are included in the data below. They will be assigned to other schools in the district under this plan.

<u>School</u>	<u>Minority Enrollment</u>	<u>"Other" Enrollment</u>	<u>Total Enrollment</u>	<u>Percent Minority</u>	<u>Building Capacity</u>	<u>Percent Utilization</u>
Montgomery	578	1	579	99.8	756	76.6
Adjusted	749	1	750	99.9	756	99.2
Balmville	13	369	382	3.4	467	81.8
Fostertown	19	324	343	5.5	370	92.7
Gardnertown	30	416	446	6.7	432	103.2
Adjusted	30	498	528	5.7	432	122.2

## 3. Reassignments Required

In addition to students in grades 5 and 6 who live within its present attendance area, Montgomery will serve older elementary special education students. Data for that school reflect the enrollment of 48 special education students from throughout the district. It is assumed this group will reflect the districtwide average for special education students which is 56 percent minority. Students in grades K-6 who reside in the current attendance areas of the four schools will be assigned as follows:



School and Grades	Source of Students <sup>1</sup> (Existing K-6 Attendance Areas)				Total Enroll.	% Min.	% Util.
	Mont- gomery	Balm- ville	Foster- town	Gardner- town			
Montgomery - 5-6 (With Special Ed.)	212 (0)	6 (130)	6 (91)	1 (159)	605 653	37.3 38.6	80.2 86.4
Balmville - K-4	200 (1)	7 (239)		( 45)	492	42.1	105.4
Fostertown - K-4	150 (0)		13 (233)		396	41.2	107.0
Gardnertown - K-4	186 (0)			12 (265)	463	42.7	107.2

#### 4. Other Information

Currently, Montgomery School has a minority enrollment of 99.8 percent, while its immediate and contiguous neighbor, Balmville, has a minority enrollment of 3.4 percent. Currently, building utilization in the four schools identified above ranges from 76 to 103 percent. The range will be about the same after the restructuring of grades to accomplish integration. The slight overcrowding in the three K-4 schools is expected to be corrected within a year or two because of declining enrollments. During the past six years there have been average annual reductions in enrollment as follows: Balmville - 5.6 percent; Fostertown - 3.5 percent; and Gardnertown - 7.8 percent. In the future, and as space becomes available in schools with lower minority enrollments, additional schools may be brought into this grouping plan to further reduce minority enrollments in these four schools.

#### C. Reduction of Minority Group Isolation in Washington Street School

##### 1. General Information

Washington Street School is the remaining school which is substantially segregated. It has a minority enrollment of 80.4 percent. The building was constructed in 1957. It currently serves grades K-4. Two other schools, New Windsor (K-6) and Vails Gate (K-4) are involved in the integration of Washington Street School.

<sup>1</sup>Minority students are indicated first, followed by "other" students shown in parentheses.

## 2. Current Data

The following current data were used in planning for the reassignment of students:

<u>School</u>	<u>Minority Enroll.</u>	<u>"Other" Enroll.</u>	<u>Total Enroll.</u>	<u>Percent Minority</u>	<u>Building Capacity</u>	<u>Percent Utilization</u>
Washington	238	58	296	80.4	320	92.5
New Windsor	68	485	553	12.3	648	85.3
Vails Gate	47	415	462	10.2	458	100.9

## 3. Reassignments Required

Washington School will serve grades 5-6. It will serve 110 students (all students in grades 5-6 residing within its present attendance area), who currently attend South Junior High School. New Windsor and Vails Gate Schools will serve grades K-4.

Students in grades K-6 who reside in the attendance areas of the three schools will be assigned as follows:

<u>School and Grades</u>	<u>Sources of Students<sup>1</sup> (Existing Attendance Areas)</u>			<u>Total Enroll.</u>	<u>% Min.</u>	<u>% Util.</u>
	<u>Washington</u>	<u>New Windsor</u>	<u>V. Gate</u>			
Washington-5-6	88 (22)	27 (141)		278	41.4	89.7
N. Windsor-K-4	188 (58)	41 (344)		631	36.3	97.4
Vails Gate-K-4	50 (0)		47 (415)	512	18.9	111.8

## 4. Other Information

It should be noted that Vails Gate will be utilized at 111.8 percent of current listed capacity. It has enrolled as many as 671 students. Its enrollment decreased by 57 between 1973-74 and 1975-76. If the enrollment of 512 is reached and is excessive, a minor boundary adjustment with Temple Hill could relieve the situation.

<sup>1</sup>The first numbers represent minority students. The numbers in parenthesis represent "other" students.



Students in grades 5-6 who reside in the Vails Gate attendance area will continue to attend Temple Hill for those grades.

D. Schools Not Affected

This plan is directed toward eliminating segregation in the three schools which present the most serious problems of segregation. Nine other schools with lower minority enrollments are involved in the plan. Six other schools, however, are not affected. They are identified and enrollment data for 1974-75 are as follows:

<u>School</u>	<u>Minority Enrollment</u>	<u>Other Enrollment</u>	<u>Total Enrollment</u>	<u>Percent Minority</u>
Gidney Avenue	274	280	554	49.5
Liberty Street*	160	139	299	53.5
Union Grove	84	190	274	30.7
West Street	119	246	365	32.6
North Junior High School	362	786	1148	31.5
Newburgh High School	668	2033	2701	24.7

E. Special Education (Elementary Ungraded)

Only three of the sixteen schools which have served K-6 regular students have also served special education students. It is apparent that the district has placed special education students where they have had room for them. The distribution of special education students in 1974-75 was as follows:

\*Original data provided by District were erroneous. The correct data for 1974-75 are shown.

<u>School</u>	<u>Number of Special Education</u>
Chestnut	46
Gardnertown	27
Gidney Avenue	<u>95</u>
TOTAL	168

It is assumed that special education students require at least twice as much classroom space as regular students. Since nearly all of them are transported to school, the location of facilities is not critical. A proposed distribution of special education students for 1976-77 is as follows:

<u>School</u>	<u>Projected Enrollment of Regular Students</u>	<u>Building Capacity</u>	<u>Excess Student Spaces</u>	<u>Number Special Education Assigned</u>
Montgomery	605	756	151	48
Temple Hill	1261	1320	59	25
Gidney Avenue	<u>554</u>	<u>756</u>	<u>202</u>	<u>95</u>
TOTALS	1455	1840	385	168

Additional flexibility in the assignment of special education students is provided by 119 surplus student spaces in Chestnut, Washington, New Windsor and Liberty Street Schools. The 19 secondary special education students who have attended the K-5 Gardnertown School should be assigned to South Junior High School, which serves grades 5-9, which already has special education classes and which will have a reduction in enrollment by the return of 110 students to Washington School, their school of residence. Elementary enrollments in Newburgh were generally on the increase until 1971-72 when 7,712 students were enrolled. There were 583 fewer students in 1974-75 than in 1971-72. An anticipated continuing decline in enrollments should provide additional flexibility for the assignment of special education students.



#### F. Reassignments and Transportation

A total of 1820 students will be reassigned from their current school attendance areas to implement this plan. Of this number, 82 students from the Gardnertown attendance area are already attending other schools, with the result that additional reassignments are reduced to 1738. The district enrollment for 1974-75 was 13,121. The number of reassignments under this plan is 13.2 percent of the total enrollment. The district K-6 enrollment is 7317. Reassignments represent 23.8 percent of the K-6 enrollment.

Many of the students who are to be reassigned are now being transported to school. It is estimated that 1491 students will be eligible for state-reimbursed transportation, but only about 816 of these are not already being transported. Some students who are currently transported will have longer rides to school. In 1973-74 Newburgh transported 8530 students to school. Under this plan, the number of students to be transported is expected to increase to 9346. The additional 816 students will represent 8.7 percent of the total. The per-student cost for transportation in 1973-74 was \$101.88. It is estimated that the cost of transportation in 1976-77 will be \$130.00 per student. The cost for transporting the additional 816 students for the same distances would be \$106,080. Inasmuch as some students already being transported will have longer rides the total estimated cost is \$120,000. Most of this amount will be eligible for 90 percent state reimbursement, so that the additional cost to the district is estimated to be about \$12,000 per year.

It is estimated that no student will have to be transported more than 6.5 miles and that the maximum time involved would be one-half hour. The average distance is estimated to be three miles with an average time of twenty minutes.

G. Estimated Potential Savings in the Closing of Broadway School

Savings in Administration

Salary of Principal (1) - \$23,000

Salary of Clerk (1) - 7,500

Savings in Operations, Maintenance, Fixed Charges

Utilities - 12,000

Maintenance - 10,000

Salary of Custodian (1) - 10,000

Insurance - 5,000

TOTAL ESTIMATED SAVINGS - \$67,500

This estimate is based on no reduction in teaching staff, assuming the district would wish to retain its current pupil-teacher ratio. Savings in administrative and custodial staff may not be immediate because of employment commitments.

It is possible that the Broadway School building and site could be sold. If sold for private use, the real property would become taxable and therefore increase revenues to the district.

H. Preparation for Integration

Integration involves far more than the reassignment of children. The realization of quality integrated education requires detailed advance planning, extensive involvement of the community, curriculum review and revision, staff training and development, and student orientation. To ensure that these important steps will be carefully planned and implemented, respondent will be required to submit to me by January 15, 1976, a plan of action for carrying out these critical steps. That plan should address at least the areas indicated



below, and should include a detailed calendar for their accomplishment. In addition, progress reports concerning implementation will be submitted to me commencing March 15, 1976 and by the fifteenth day of each second month thereafter. These reports will include accomplishments up to the date of submission, plans for the next three-month period, and long-range goals to provide quality integrated education for the students of the District. The plan to be submitted to me by January 15, 1976 shall include details for implementing the following:

1. A series of orientation meetings to be held on a school-by-school basis. They should provide an opportunity for every segment of the community and for all parents to be fully informed of the content of the plan and the sequence of activities to implement its provisions. Meetings should continue throughout the year. Citizens should have ample opportunity to contribute their thinking to the integration effort.
2. A district curriculum committee should be organized for the following purposes: examination of present curricula for suitability, comprehensiveness and effectiveness in serving the children and youth of the district; development and utilization of curricula which enhance racial-ethnic understanding and develop positive self-concepts of all students; development of recommendations for district level changes in curricular and instructional approaches where deemed desirable; and implementation of changes which have been approved.
3. Each school should also have a curriculum committee to serve the individual school in the same manner as the district committee serves the district. At least one representative of each school committee should serve on the district curriculum committee, thus

providing opportunity for presenting progress reports, sharing information, and contributing to district level curriculum recommendations.

4. During 1975-76, the equivalent of at least four days should be devoted to staff development in preparation for integration. Programs should include issues related to school integration, intergroup relations, the importance of adapting instruction to the individual needs and capabilities of students, and the importance of developing positive self-concepts in students. The school calendar should be developed to provide special conference days for the equivalent of those four days. Attendance by all school personnel should be mandatory. This process should be repeated during the 1976-77 school year. During that year, special emphasis should be given to the identification and resolution of problems which may have developed as a result of integration.
5. In addition to staff development activities indicated above, a series of seminars for staff development purposes should be scheduled for both the 1975-76 and 1976-77 school years. These seminars should be devoted to specific concerns and interests relating to integration. Special seminars for administrators should be convened, and building principals and central office personnel should be expected to participate actively. Seminars should be held on a continuing basis during 1975-76 and 1976-77.
6. Children who will be reassigned should be provided an opportunity to become familiar with the school which they will be attending. Particular emphasis should be given to the location of physical facilities, means



of ingress and egress, and school codes and rules. They should have the opportunity to become acquainted with staff members who will serve them and with other students who will be their new classmates. Children in the district who are not directly affected by the plan should be provided with a positive orientation as to what is taking place and the reasons for the actions that are being taken.

Technical assistance and consultant services will be available to the school district from the State Education Department, particularly the Division of Intercultural Relations. Services may also be available from the General Assistance Center at Teachers College, Columbia University, the State University College at New Paltz, Marist College, Vassar College and other institutions in the general geographic area in which Newburgh is located. Some funding possibilities for the district may be available through the Emergency School Aid Act and Title IV of the Civil Rights Act of 1964. The Division of Intercultural Relations in Education can also be helpful in providing or funding consultant services, and assisting in the preparation of applications for funding.

FOR RELEASE MONDAY, DECEMBER 22, 1975

NYQUIST CALLS FOR PLANS IN  
THREE NEW YORK CITY INTEGRATION APPEALS

Commissioner of Education Ewald B. Nyquist today announced that he has issued the attached orders in three racial integration appeals involving Andrew Jackson high school in Queens, Erasmus Hall high school in Brooklyn and junior high schools in Community District 18 in Brooklyn.







No 9154

# **The University of the State of New York.**

## **The State Education Department**

**Before the Commissioner**

IN THE MATTER

of the

Appeal of PAUL FISHMAN as a minor  
by his parent and next friend HERMAN  
FISHMAN, Individually and for the  
class of persons similarly situated,  
HERMAN FISHMAN, MAUREEN THOMPSON as a  
minor by her parent and next friend  
ELLA THOMPSON, Individually and for  
the class of persons similarly situated,  
ELLA THOMPSON, BARBARA KATZ as a minor  
by her parent and next friend ROCHELLE  
KATZ, Individually and for the class of  
persons similarly situated, ROCHELLE  
KATZ, THE ERASMUS HALL HIGH SCHOOL  
PARENT TEACHERS ASSOCIATION, and THE  
FLATBUSH DEMOCRATIC CLUB from action  
of the Board of Education of the City  
School District of the City of New York,  
with respect to racial imbalance in  
Erasmus Hall High School.

---

Elicofon, Glassman, Babitch and Chasin, Esqs....attorneys for  
petitioners

Barry Elisofon, Esq., of counsel

Hon. W. Bernard Richland.....attorney for respondents  
Corporation Counsel

Michael S. Cecere, Esq., of counsel

James I. Meyerson, Esq.....attorney for the National  
Association for the Advance-  
ment of Colored People, amicus  
curiae

Robert Carroll, Esq., amicus curiae

---



Petitioners, the Erasmus Hall High School Parent Teachers Association, the Flatbush Democratic Club and certain named individuals who purport to act both in their individual capacities and as representatives of a class alleged to include similarly situated individuals, seek an order vacating and setting aside a determination of the New York City Board of Education which affirmed the Chancellor's zoning plan for Erasmus Hall High School for the 1975-76 school year. Respondents have challenged the capacity of certain designated petitioners to maintain this proceeding, and these technical objections with respect to standing must be considered prior to any review of the merits.

The petition characterizes the Flatbush Democratic Club as an incorporated political organization covering the 44th Assembly District, which district has substantial numbers of members living in the Erasmus Hall and Prospect Heights attendance zones. This political organization, however, has demonstrated no justiciable interest in the determination sought to be reviewed and has failed to identify how its legal rights have been infringed (Matter of Cohen v. Board of Education, Sup. Ct., Kings County, McLaughlin, J.: N.Y.L.J., December 26, 1972, p. 15, cols. 5, 6; n.o.r.; Matter of Parent Association of Public School No. 37, 13 Ed. Dept. Rep. 261).

Petitioners allege that respondent, through its acts and omissions, has perpetuated and maintained Prospect Heights High School as a racially segregated school "denying petitioners and people they represent equal educational opportunity . . . ."

However, the Parent Teachers Association of Erasmus Hall High School and the individual petitioners clearly lack capacity to challenge that portion of the city board's determination which affects Prospect Heights High School. None of the petitioners purport to have a child in attendance at that school or to suffer from any direct or personal threat to the health, safety or welfare of his child at such school (Matter of Shanks v. Donovan, 32 AD 2d 1037; Matter of Muka v. Cornell, 48 AD 2d 944). It is settled that an individual may litigate only where such individual possesses a personal stake in the outcome such as to assure concrete adverseness which sharpens the presentation of issues (O'Shea v. Littleton, \_\_\_ U.S. \_\_\_, 38 L.Ed. 2d 674; DeFunis v. Odegaard, 416 U.S. 312, 40 L.Ed. 2d 164). None of the petitioners has such a personal stake sufficient to confer capacity to litigate alleged racial imbalance at Prospect Heights High School. Since no person may represent a class if he is not a member of it, or accomplish as a representative of a class what he may not achieve in his individual capacity (Kauffman v. Dreyfuss Fund, Inc., 434 F. 2d 727; cert. den. 401 U.S. 974, 91 S. Ct. 1190, 28 L.Ed. 2d 323; Ritacco v. Norwin School District, 361 F. Supp. 930), I shall not on the record before me consider allegations with respect to racial imbalance at Prospect Heights High School.

It is also well settled that the Commissioner will not decide appeals after subsequent events have rendered moot the element of controversy which previously existed between the parties (Matter of



Joseph, 12 Ed. Dept. Rep. 83; Matter of Cashin, 12 id. 103; Matter of Dain, 13 id. 258; Matter of Bretch, 15 id. \_\_\_\_\_, Decision No. 9111, dated September 22, 1975). Since it appears from the pleadings that petitioners Maureen Thompson and Barbara Katz have graduated from Erasmus Hall High School and are no longer personally affected by the decision sought to be reviewed, it is obvious that no decision I can render can protect any rights that either may once have had. This appeal is clearly moot with respect to them and with respect to those who purport to represent them (Doremus v. Board of Education, 342 U.S. 429; DeFunis v. Odegaard, supra).

Notwithstanding respondents' contention to the contrary, the Parent Teachers Association of Erasmus Hall High School has capacity to maintain the instant appeal (Matter of NYC School Bds. Assoc. Inc. v. Bd. of Educ. of City School Dist.; Matter of Efferson v. Bd. of Educ. of City School Dist., Appellate Division, Second Judicial Department, decided December 9, 1975, \_\_\_\_\_ AD 2d \_\_\_\_\_). Further, Herman Fishman, as parent and next friend of Paul Fishman, a current student at Erasmus Hall High School, clearly possesses the requisite capacity to challenge the decision sought to be reviewed.

Robert Carroll, Republican State Committeeman for the 44th Assembly District has moved for leave to file a brief amicus curiae. As I noted in Matter of Parent Association of Public School No. 37, supra, status in a political party is clearly not relevant with respect to standing or aggrievement. Mr. Carroll does not allege that he has a child affected by the City Board's determination and, consequently, does not appear to be aggrieved by the decision sought to be reviewed. However, section 275.17 of the Regulations of the Commissioner of Education authorizes the

Commissioner of Education in his discretion to permit interested persons or organizations to submit memoranda of law, amicus curiae, without a showing of such interest or capacity such as would be required of a party to an appeal. Consequently, Mr. Carroll's application for leave to file a memorandum of law has been granted.

Turning now to the merits, on March 21, 1975, Chancellor Anker issued a plan for the rezoning of the Brooklyn high schools. The plan had as its stated objectives for the 1975-76 school year promotion of integrated education where feasible, optimum utilization of school space, increased use of educational options, and attainment of a projected goal of no less than 30% minority enrollment in each Brooklyn high school. The plan projects an ethnic composition for the Erasmus Hall student body of approximately 68% black, 2% Oriental, 15% Hispanic and 15% white. Petitioners contrast this with the fact that as recently as 1968 Erasmus Hall High School had a student population which was 31.3% black, 4.1% Hispanic and 64.6% white, and contend that through its acts and omissions respondent Board of Education has contributed to the precipitous decline in the white population of the school through such acts as diversion of white students to the newly-created attendance zone for the Franklin D. Roosevelt High School, designation of J.H.S. 246 as a "freedom of choice" school, the granting of language variances, the failure to take steps to insure against address falsification, and failure to investigate requests for variances based upon medical excuses.



Respondent denies that it has fostered or contributed to the segregated condition of Erasmus Hall High School, contending that demographic changes in the area and other factors over which the Board has no control have frustrated its continued affirmative efforts to prevent Erasmus Hall from becoming a racially identifiable minority school. Respondent contends that through a variety of techniques, it has attempted to provide an integrated educational experience "wherever feasible in accordance with the changing population patterns in the Borough" (Answer, Paragraph 65).

In 1968, whites composed 59.1% of the student population of combined Brooklyn academic and vocational high school students. The projected percentage of white students for the 1975-76 school year in the Borough of Brooklyn is only 42%, while the percentage of blacks has increased to 39% of the total student population, students of Hispanic background will constitute 17% of the student population and the remaining 2% will be Oriental.

While the decline in the percentage of white students attending public high schools is clearly substantial, the percentage of decline in the white student population in Erasmus Hall is even more dramatic. The rate of decline is almost three times that of the borough-wide average, despite respondent's efforts to check the attrition of white students through such devices as the creation of an Institute of Performing Arts as a subschool at Erasmus Hall, removal of the northernmost section of the Erasmus

Hall attendance zone and reassignment of students residing therein to Prospect Heights, and designation, in 1971, of the northern portion of the district as an open admissions area, allowing students living in that area the option of attending Franklin D Roosevelt High School, LaFayette High School or New Utrecht High School, each of which has a racial composition which is predominately white. Respondent contends that "[I]n view of the changing population patterns in the Erasmus area, resulting in the steady increase of blacks and steady decrease of whites, the present zoning plan adopted by the Board of Education for Erasmus is the most feasible and realistic approach to deal with the problems of integration and utilization at the school" (Answer, Paragraph 36). Respondent contends that the steps it has taken are sufficient, I must disagree.

The Board of Regents has consistently affirmed the importance of achieving quality integrated education in the public schools, stressing the educational importance of exposing a student on a personal basis to the cultural richness and individual diversity of his neighbors. In February, 1975, the Board restated its conviction that "equal opportunity for high quality education is the right of every pupil in the public schools of this State, regardless of race, color, or creed" and noted that "[T]he Regents believe that integrated schools are essential to assure that primary right to all pupils residing in racially diverse communities". "An integrated school", the statement continues, "is one in which the



racial composition of the student body reflects the pupil population of the district without necessarily attempting to be proportionate to it, and in which the programs, facilities, and equipment are not racially identifiable."

Erasmus Hall High School is not an integrated school when tested by the standard enunciated by the Board of Regents. The school's white enrollment is projected at 15% in a borough in which the racial composition of the student body at the high school level is projected at 42% white. Neither the rezoning of the northernmost section of Prospect Heights nor affording children in the newly-defined northern section an option to attend elsewhere appears to have stopped the precipitous attrition of the school's remaining white population. Further, the school is racially isolated and identifiable as a minority school when viewed within the context of the contiguous and proximate high school attendance zones located to the east, west and south. The Brooklyn High School Zoning Plan submitted by the Chancellor and affirmed by the respondent Board of Education projected the following figures for September 1975:

<u>School</u>	<u>Utilization Rate</u>	<u>Ethnic Composition</u>			
		<u>Black</u>	<u>Hispanic</u>	<u>Oriental</u>	<u>Other</u>
Erasmus Hall	107%	68%	15%	2%	15%
Franklin D. Roosevelt	126%	13%	13%	2%	72%
James Madison	90%	24%	4%	1%	71%
John Jay	144%	22%	43%	1%	34%
Midwood	120%	27%	5%	2%	66%
New Utrecht	131%	17%	4%	1%	78%
Samuel J. Tilden	92%	48%	6%	1%	45%

It is apparent from the record before me that the board of education did not act in accordance with sound educational policy when it accepted a plan which relegated Erasmus Hall High School to continued racial isolation. Respondent's contention that nothing more is feasible is belied by the existence of substantial white populations in neighboring attendance zones. More can and should be done to afford Erasmus students the benefits of a quality integrated educational experience.

The Board of Regents, in its February, 1975 statement, suggested various techniques for achieving high quality integrated education for all pupils. These include, where feasible:

"strategic location of new schools or closing of unneeded schools or both, optional transfer programs and open enrollment, expansion of magnet and specialized schools, compensatory education programs, curriculums which enhance interracial understanding, recruitment of qualified faculty from varied racial and ethnic backgrounds, equalization of state aid to school districts, alteration of school attendance zones where necessary, and in some instances, the judicious and reasonable transportation of pupils with due consideration that the health, safety, and access to high quality education of pupils are not imperiled and with particular consideration that children of elementary school age are not transported for more than moderate distances."

The Chancellor and the New York City Board of Education have long demonstrated that they are committed to the principle of quality integrated education, and they have applied that principle, and many of the techniques suggested by the Regents, in various parts of the city. I am confident that they can do so with respect to Erasmus Hall High School.



IT IS ORDERED that respondent submit to me by no later than March 1, 1976, a plan for the racial integration of Erasmus Hall High School, to be effective September 1, 1976. Such plan shall have the effect of insuring that the racial composition of a student body of the school will reflect the pupil population within the borough, without necessarily being proportionate to it.

Such plan shall also include a local grievance procedure, incident to the implementation of such plan, for parents who believe that the rights of their children to health, safety and quality education have been imperiled, contravened or denied as a result of their school assignment in accordance with the integration plan. The grievance procedure shall provide that respondent will, prior to the date for implementation of the plan, identify those students who are to be reassigned to a school other than the one they would otherwise attend; notify the parents of such students of the proposed reassignment; advise those parents that if they believe that the proposed reassignment would adversely affect their child's health, safety or access to quality education, they may notify the school authorities to that effect, in writing, setting forth the nature and basis of their concerns; determine, in each case in which such a grievance is submitted, whether in the judgment of the respondent board of education or its designated officers or employees the child's health, safety or access to quality education would in fact be impaired; communicate that determination to the parents, in writing; afford the parents

an opportunity for a meeting with appropriate school authorities for further discussion, upon written request by the parents; make a final determination upon such grievance, in writing; and submit to me, for approval, a summary of the determinations made by respondent or its designated officers or employees in any grievances submitted.

THE APPEAL IS SUSTAINED to the extent indicated, and jurisdiction is hereby retained pending my further order.

IN WITNESS WHEREOF, I, Ewald B.

Nyquist, Commissioner of  
Education of the State of New  
York, for and on behalf of the  
State Education Department, do  
hereunto set my hand and affix  
the seal of the State Education  
Department, at the City of Albany,  
this 18th day of December ,

1975

  
Commissioner of Education









No 9153

**The University of the State of New York.**  
**The State Education Department**  
**Before the Commissioner**

IN THE MATTER

of the

Appeal of THE PARENT ASSOCIATION OF  
ANDREW JACKSON HIGH SCHOOL, an unin-  
corporated association, FRED PEREZ  
and JULIO PEREZ, minors, by their father  
and next friend Bienvenido Perez,  
PERSYMPHONIE BROWN, a minor, by her  
father and next friend David Brown,  
DAVID BROWN, JR., a minor, by his mother  
and next friend Constance Brown, MICHAEL  
McFARLAND, a minor, by his father and  
next friend Jerome McFarland, on behalf  
of themselves and on behalf of all persons  
similarly situated, from action of the  
Board of Education of the City School  
District of the City of New York with  
respect to racial segregation and school  
attendance zones in the Borough of Queens.

---

Nathaniel R. Jones, Esq.....attorney for petitioners  
James I. Meyerson, Esq., of counsel

Hon. W. Bernard Richland.....attorney for respondent  
Corporation Counsel  
Deborah Rothman, Esq., of counsel

---

Petitioners are the Parent Association of Andrew Jackson High School and several named individuals who appeal in their capacities as parents of children attending Andrew Jackson High School and as representatives of a class alleged to consist of "all students



and potential students attending school at Andrew Jackson High School, Borough of Queens, New York, the New York City School District who are subject to the policies and practices of the respondent parties which created, maintained and perpetuated said school as a racially segregated school." They seek an order vacating and setting aside respondent Board's determination with respect to establishment of the Andrew Jackson attendance area as a Choice of Admissions area for the 1975-76 school year.

I find that the necessary requisites for maintaining a class appeal have been satisfied [8 NYCRR 275.2 (a)], and that this appeal is properly brought as a class appeal.

Notwithstanding respondents' contention to the contrary, the Parent Association of Andrew Jackson High School has capacity to maintain the instant appeal (Matter of NYC School Bds. Assoc. Inc. v. Bd. of Educ. of City School Dist.; Matter of Efferson v. Bd. of Educ. of City School Dist., Appellate Division, Second Judicial Department, decided December 9, 1975, \_\_\_\_ AD 2d \_\_\_\_). Further, the named petitioners who are parents of students currently in attendance at Andrew Jackson High School clearly possess the requisite capacity to challenge the decision sought to be reviewed.

This is not the first time that the Commissioner has been asked to review, in his judicial capacity, the high school zoning pattern established for Andrew Jackson High School. In 1967, in Matter of Gray, 6 Ed. Dept. Rep. 92, Commissioner Allen directed the New York City Board of Education to prepare and submit to him a plan, for implementation by the beginning of the 1967-68 school year,

for the reduction of racial imbalance at Andrew Jackson High School. In that decision, Commissioner Allen noted that the ethnic composition of the school, which was then 46.7 percent black, 1.6 percent Puerto Rican and 51.8 percent "other", reflected a percentage of non-white pupils three times that of the borough average.

By way of implementation of Commissioner Allen's decision, the Board of Education retained a firm of educational consultants to study and report on possible alternative techniques to reduce racial imbalance at Andrew Jackson High School. On November 27, 1967, Commissioner Allen granted the Board additional time to prepare its recommendations (7 Ed. Dept. Rep. 90).

In May, 1967, the superintendent of schools wrote Commissioner Allen and informed him of the institution of an expanded program in music and in art in Andrew Jackson. "The program", the report states, "emulating the efforts of the High School of Music and Art, is being made available to talented pupils from any area of the Borough of Queens. It is hoped that this will attract 'others' to the school." Although the program met with some initial success in attracting and holding "others", it is clear from the table which appears at page 16 of the Zoning History of Andrew Jackson High School, which has been annexed as an exhibit to respondents' answer, that the program has been unsuccessful in achieving its objectives. In 1974, only five white students took advantage of the art program, and only one white student participated in the music program.

On March 10, 1968 the superintendent of schools announced that a large portion of the Andrew Jackson attendance area would be subdivided into a number of enclaves. Each of the enclaves would



be zoned to a different Queens high school where the percentage of white students exceeded the percentage of minority students in attendance. School officials projected that this rezoning would lead to an ethnic composition in Andrew Jackson of 60 percent white and 40 percent non-white. That projection, however, was never realized, and the percentage of white students in attendance has declined precipitously through the succeeding years.

It appears from the record that respondents continued their efforts to check the attrition of white students through such actions as the alteration of attendance zones, more careful monitoring of requests for variances, institution of special programs and additional foreign languages, provision of additional staff, retention of utilization rates at a level sufficient to retain the school on single session, and, ultimately, by the abandonment, in 1973, of the continued use of enclaves in favor of designation of the former enclave zone as a "choice of admissions" area.

Today, Andrew Jackson High School is virtually an all-minority school. In 1974, approximately two percent of the children in attendance were white while the remainder were black or Hispanic. The zoning plan proposed by the Chancellor, as modified by the City Board, calls for the designation of the entire Andrew Jackson attendance zone as a choice of admissions area. Each student zoned into Jackson may elect to attend any one of eight integrated high schools elsewhere. While it is true that no students will be compelled to attend the segregated facility, it is equally apparent that any meaningful attempt to desegregate it (as opposed to providing an integrated experience for those who voluntarily choose to attend) has been abandoned.

Petitioners in this proceeding seek an order vacating the determination of the New York City Board of Education which affirmed in part the high school zoning pattern established by the Chancellor for Andrew Jackson High School for the 1975-76 school year. They contend that the Chancellor's refusal to alter the attendance area of Andrew Jackson High School reflects the Board's decision to abandon any attempt to integrate the facility or to provide its students with the benefits of a quality integrated educational experience.

Respondents, in their answer, state that as a result of demographic changes and other factors over which they have no control, their continued efforts to prevent Andrew Jackson from becoming a racially isolated school have failed. They contend that with the exception of Andrew Jackson High School, and August Martin High School (another choice of admissions school), all other Queens high schools now function as integrated high schools. They state that ". . . it is the educational judgment of the respondents that to make the entire Jackson attendance area a Choice of Admissions area is the best practical way of giving all pupils in the said area an opportunity to attend integrated schools, without at the same time weakening viable integration in the other high schools in the borough". Respondents contend that the steps that they have taken are sufficient. I cannot agree.

The Board of Regents has consistently affirmed the importance of quality integrated education in the public schools, stressing the educational necessity for exposing a student on a personal basis to the cultural richness and individual diversity of his neighbors.



In February, 1975, the Board restated its conviction that "equal opportunity for high quality education is the right of every pupil in the public schools of this State, regardless of race, color, or creed" and noted that "[T]he Regents believe that integrated schools are essential to assure that primary right to all pupils residing in racially diverse communities". "An integrated school", the statement continues, "is one in which the racial composition of the student body reflects the pupil population of the district without necessarily attempting to be proportionate to it, and in which the programs, facilities, and equipment are not racially identifiable."

Andrew Jackson High School is not an integrated school by any conceivable standard. The student population is almost exclusively black and Hispanic in a borough in which 59 percent of the public high school students were white during the 1974-75 school year. Accepting the accuracy of respondents' figures, the Chancellor's zoning plan for the Queens high schools for the 1975-76 school year will result in three high schools which will have a student population which is between 70 and 77 percent white, 14 high schools with white student populations varying between 44 and 67 percent, one school which will be only 35 percent white, August Martin High School which will have a five percent white student population and Andrew Jackson High School which will have a projected white enrollment of two percent. Clearly, Andrew Jackson High School is a racially identifiable minority

high school in a borough in which white students constitute in excess of 50 percent of the public high school student population. Under these circumstances, the New York City Board of Education should not have approved a plan which made no effort to bring to those students who would not affirmatively choose to attend high school elsewhere the educational and social benefits of a quality integrated educational experience.

Freedom of choice or choice of admissions is rarely an effective technique for achieving integrated education unless it is used in conjunction with other integration measures. No such additional measures are proposed under the Chancellor's plan. I must therefore find that the New York City Board of Education acted in a manner contrary to sound educational policy when it approved a plan which relegated Andrew Jackson High School to perpetual segregation, leaving an escape route only to those who are able to utilize it.

The Board of Regents, in its February, 1975 statement, suggested various techniques for achieving high quality integrated education for all pupils. These include, where feasible:

"strategic location of new schools or closing of unneeded schools or both, optional transfer programs and open enrollment, expansion of magnet and specialized schools, compensatory education programs, curriculums which enhance interracial understanding, recruitment of qualified faculty from varied racial and ethnic backgrounds, equalization of state aid to school districts, alteration of school attendance zones where necessary, and in some instances, the judicious and reasonable transportation of pupils with due consideration that the health, safety, and access to high quality education of pupils are not imperiled and with particular consideration that children of elementary school age are not transported for more than moderate distances."



The Chancellor and the New York City Board of Education have long demonstrated that they are committed to the principle of quality integrated education, and they have applied that principle, and many of the techniques suggested by the Regents, in various parts of the city. I am confident that they can do so with respect to Andrew Jackson High School.

THE APPEAL IS SUSTAINED, and

IT IS ORDERED that respondent submit to me by no later than March 15, 1976, a plan for the racial integration of Andrew Jackson High School, to be effective September 1, 1976. Such plan shall have the effect of insuring that the racial composition of the student body of the school reflects the pupil population of the borough of Queens, without necessarily being proportionate to it.

Such plan shall also include a local grievance procedure, incident to the implementation of such plan, for parents who believe that the rights of their children to health, safety and quality education have been imperiled, contravened or denied as a result of their school assignment in accordance with the integration plan. The grievance procedure shall provide that respondent will, prior to the date for implementation of the plan, identify those students who are to be reassigned to a school other than the one they would otherwise attend; notify the parents of such students of the proposed reassignment; advise those parents that if they believe that the proposed reassignment would adversely affect their child's health, safety or access to quality education, they may notify the school authorities to that effect, in writing,

setting forth the nature and basis of their concerns; determine, in each case in which such a grievance is submitted, whether in the judgment of the respondent board of education or its designated officers or employees the child's health, safety or access to quality education would in fact be impaired; communicate that determination to the parents, in writing; afford the parents an opportunity for a meeting with appropriate school authorities for further discussion, upon written request by the parents; make a final determination upon such grievance, in writing; and submit to me, for approval, a summary of the determinations made by respondent or its designated officers or employees in any grievances submitted.

THE APPEAL IS SUSTAINED to the extent indicated, and jurisdiction is hereby retained pending my further order.

IN WITNESS WHEREOF, I, Ewald B.

Nyquist, Commissioner of  
Education of the State of New  
York, for and on behalf of the  
State Education Department, do  
hereunto set my hand and affix  
the seal of the State Education  
Department, at the City of Albany,  
this 18th day of December, 1975.



*Ewald B. Nyquist*  
Commissioner of Education



2

11





No 9155

# **The University of the State of New York.**

## **The State Education Department**

**Before the Commissioner**

IN THE MATTER

of the

Appeal of SYLVIA FRANK, Member,  
Community School Board No. 18;  
P.T.A., J.H.S. 285-k by its  
President MARILYN FEUERSTEIN;  
COMBINED P.T.A.'s of EAST  
FLATEBUSH by its President  
DOROTHY BRESNICK; GRACE JOHNSON,  
JOHN MARTENEZ and MIRIAM PEDOWITZ,  
individually and on behalf of all  
other persons similarly situated,

Petitioners

-against-

The Board of Education of the City  
School District of the City of  
New York and Irving Anker, Chancellor,

Respondent.

---

Rebell & Krieger, Esqs.....attorneys for petitioners  
Michael A. Rebell, Esq., of counsel

Hon. W. Bernard Richland.....attorney for respondent  
Doron Gopstein, Esq., of counsel

James I. Meyerson, Esq.....attorney for the National  
Association for the Advance-  
ment of Colored People,  
amicus curiae

---

Petitioners, some of whom appear both individually and as



representatives of a class composed of other parents and children similarly situated, seek an order directing the New York City Board of Education, hereinafter referred to as the "City Board", to compel the Board of Education of Community School District No. 18, hereinafter referred to as the "Community Board", to adopt an intra-district zoning plan which will result in greater racial integration in certain elementary and junior high schools under the jurisdiction and control of the Community Board. Petitioners appealed to the Chancellor from the refusal of the Community Board to take further steps to integrate the junior high schools and upon his refusal to substitute his judgment for that of the Community Board, appealed such determination to the City Board, which affirmed the same.

In Matter of Frankel, 13 Ed. Dept. Rep. 33 (1973), certain members of the Community Board and various other individuals brought an appeal to the Commissioner from the acceptance by the City Board of a plan for achieving greater racial integration in certain designated junior high schools in Community School District No. 18. The boundaries of this district encompass the communities of East Flatbush and Canarsie. A majority of the members of the Community Board reside in the Canarsie section of the district. In the Frankel case petitioners, representatives of the East Flatbush sector of the district, sought to compel redistribution of junior high school pupils within the community school district in such a manner that the percentage of non-white students in Junior High School 285 (which serves a significant portion of the East Flatbush community) more closely approximates the ethnic composition of the

two junior high schools which are located within and serve the Canarsie section of the community. The relevant facts are more fully set forth in the Frankel decision, and in Matter of Harris, 13 Ed. Dept. Rep. 24, a companion decision on related issues.

In 1973, the student bodies of J.H.S. 211 and J.H.S. 68 were predominately white, while J.H.S. 285, located in East Flatbush, had a slight non-white majority. Under the plan approved by the Board of Education, the Community Board projected that for the 1975-76 school year, J.H.S. 285 would have an ethnic census of 52% "others" and 48% minority students as a consequence of minor revisions in attendance patterns.

The following table, prepared in 1973, shows the projected racial composition of the student bodies of each of the three affected junior high schools for the 1975-76 school year. The figures in parentheses reflect the actual racial census in the affected schools for the 1972-73 school year.

	<u>"Others"</u>	<u>Blacks and Puerto Ricans</u>
J.H.S. 68	85% (98.7%)	15% (1.3%)
J.H.S. 211	70% (65.5%)	30% (34.5%)
J.H.S. 285	52% (42.3%)	48% (57.7%)

Although I refused in the Frankel case to substitute my judgment for that of the City Board, I noted that substantial doubt existed with respect to the likelihood of attaining the projected working goals with respect to J.H.S. 285. Consequently, I granted the relief sought in the Frankel petition to the extent that I reinstated a portion of the Chancellor's determination which required recon-



sideration of the zoning patterns and their effect on the racial composition of the student population in each of the three affected junior high schools by both the Office of the Chancellor and the Community School Board by no later than January 1, 1975. The Board of Education was directed " . . . to determine whether such plan has actually achieved greater integration in the three affected junior high schools and to determine what, if any, further action is warranted after review of the recommendations of the chancellor and the community school board."

After my decisions in the Harris and Frankel appeals, the Community Board took steps to implement the approved plan. The plan was thereafter amended, with the approval of the Chancellor, to rezone the Breukelen Houses development into the elementary attendance areas for P.S. 114, P.S. 115 and P.S. 276, each of which feeds into J.H.S. 68, while Breukelen Houses children would previously have attended either P.S. 242, P.S. 272 or P.S. 279, each of which sends students to J.H.S. 211.

When I rendered my decision in Matter of Frankel, the student population at J.H.S. 285 was 42.3% white. The percentage of whites was projected by the City Board to increase to 52% in the 1975-76 school year. That goal, however, was not attained. Substantial attrition of the white population in the attendance areas of the elementary schools which send students to J.H.S. 285, as a result of rapid demographic changes within the community, coupled with a progressive shrinkage of the percentage of white students in the

higher grades, reduced the percentage of whites in attendance at J.H.S. 285 by the opening of the 1974-75 school year to 27%. J.H.S. 68 and J.H.S. 211, however, had student populations during the same period of time which were, respectively, 87% and 62% white.

Petitioners allege that the Community Board has refused to take steps to achieve greater racial integration in the junior high schools of the district. They argue that the Canarsie majority on the board has been more concerned with protecting the racial composition of the predominately white Canarsie neighborhood schools than with providing a quality integrated educational experience for all of the students of the district. They argue that the Community Board has, in effect, refused to make necessary revisions in attendance zones and has allowed the schools within the East Flatbush portion of the community to deteriorate into segregated facilities. In support of their contentions, they annex a copy of a report dated October 27, 1972, prepared for the Deputy Chancellor by the Director of the Central Zoning Unit of the New York City Board of Education, which states, insofar as pertinent:

"1. . . . Zone change proposals, copies of which are on file, would tend to support our belief that, over the years, there were deliberate efforts to eliminate space in the elementary feeder schools feeding the intermediate schools of District 18 and minimize the flow into these schools of minority children through Free Choice Transfer and other integration-related programs. Further, requests and grants for space for additional services in District 18 contributed to this trend. Similar movements gained similar results, but to a lesser degree in J 211.

. . .



"3. High utilization (based on lower capacities) in subsequent years have apparently curtailed this type of movement. Consequently, in the last four years feeders have come only from the Canarsie area and have resulted, now, in 98% 'Others' for J 68, 71% for J 211, despite the fact that the district average is about 45% 'Others.'

"4. Annexes added to J 232 (first recorded in 1971) and an annex to J 252 (opened in September, 1972) reveal an effort on the part of District 18 to create additional space in heavy minority pupil concentration. Other schools (with heavy 'Others' concentration) were not recommended for such relief, thus making it possible to prevent the assignment of any sizeable number of minority children to schools in the southern part of District 18.

"5. Correspondence and conference reports on file in the Office of the Superintendent of Schools in two administrations should show concerted effort on the part of District 18 to place unreasonable limitations on Free Choice assignments (even siblings) in the elementary schools which are feeders to P 68, and other intermediate schools in the district.

. . ."

Petitioners further allege that the proposal put forward by the Community Board to increase racial integration at J.H.S. 285 by reorganization of the school as a programmed modular school having a special enriched curriculum, which proposal is still under consideration, is in itself indicative of the refusal of the Community Board to consider reassignment of white students residing within Community District No. 18 to the junior high schools of the district. The key element in the proposed plan is the possibility of attracting white students from outside the district. Although rezoning the Breukelen Houses would increase the percentage of minority students at J.H.S. 68 by reassigning minority students who would otherwise have attended J.H.S. 211, this would have no prac-

tical effect on the increasing imbalance at J.H.S. 285.

Respondent Chancellor and the New York City Board of Education have not submitted any answer to the petition, despite the fact that they requested and were given successive extensions of time to do so. Respondents did, however, participate at oral argument and make their position known. They contend, in effect, that the Community Board has taken steps to achieve greater racial integration in the junior high schools of the community district by eliminating white-isolated schools, by stabilizing integration to the extent possible at other schools of the district and by attempting to check attrition of white populations in the elementary schools. It was the opinion of the Chancellor, which opinion was affirmed by the New York City Board of Education, that the steps taken by the Community Board were sufficient. I cannot agree.

The Board of Regents has consistently affirmed the importance of quality integrated education in the public schools, stressing the educational necessity for exposing a student on a personal basis to the cultural richness and individual diversity of his neighbors. In February, 1975, the Board restated its conviction that "equal opportunity for high quality education is the right of every pupil in the public schools of the State, regardless of race, color, or creed" and noted that "[T]he Regents believe that integrated schools are essential to assure that primary right to all pupils residing in racially diverse communities". "An integrated school", the statement continues, "is one in which the racial composition of the student body reflects the pupil population of the



district without necessarily attempting to be proportionate to it, and in which the programs, facilities, and equipment are not racially identifiable."

Junior High School 285 is not an integrated school when tested by the standard enunciated by the Board of Regents. The school's enrollment is projected at only 26% white for the 1975-76 school year, although white students will comprise approximately 75% of the student population of the two junior high schools located within the Canarsie section of the district. The school is racially isolated and identifiable as a minority school when viewed within the context of the contiguous and proximate attendance zones of the neighboring junior high schools. It is apparent from the record before me that the City Board did not act in accordance with sound educational policy when it affirmed a plan which in practical effect abandoned Junior High School 285 to continued decline in the school's white population.

In Matter of Frankel I took note of the obvious segregation existing in J.H.S. 232 and J.H.S. 252. While those schools were not encompassed within the orders of the Chancellor or the City Board which were sought to be reviewed, and the record before me was devoid of facts reflecting the precise racial composition and degree of utilization of such schools, I urged the Community Board to extend to children attending these facilities the advantage of a quality integrated educational experience. Once again, the record

is barren with respect to the degree of utilization or type of program being afforded in Junior High School 232 or Junior High School 252. What is, however, apparent is that no meaningful steps have been taken by the Community Board or directed by the Chancellor or City Board to provide an integrated education for these East Flatbush students. While the student population in the Canarsie schools is approximately 75% white, minority students constitute approximately 89% of the student population in the East Flatbush schools, including J.H.S. 285. More can and should be done, both as an immediate objective and as a long-range goal, for assuring a quality integrated educational experience in all of the junior high schools of the community school district.

The Board of Regents, in its February, 1975 statement, suggested various techniques for achieving high quality integrated education for all pupils. These include, where feasible:

"strategic location of new schools or closing of unneeded schools or both, optional transfer programs and open enrollment, expansion of magnet and specialized schools, compensatory education programs, curriculums which enhance interracial understanding, recruitment of qualified faculty from varied racial and ethnic backgrounds, equalization of state aid to school districts, alteration of school attendance zones where necessary, and in some instances, the judicious and reasonable transportation of pupils with due consideration that the health, safety, and access to high quality education of pupils are not imperiled and with particular consideration that children of elementary school age are not transported for more than moderate distances."

The Chancellor and the New York City Board of Education have long demonstrated that they are committed to the principle of quality integrated education, and they have applied that principle, and many



of the techniques suggested by the Regents, in various parts of the city. I am confident that they can do so with respect to the intra-district zoning of Community School District No. 18.

IT IS ORDERED that respondent New York City Board of Education direct the Chancellor to submit to the City Board by no later than February 15, 1976, a plan to achieve greater racial integration in J.H.S. 285. Such plan, which shall be effective September 1, 1976, shall be prepared by the Chancellor after consultation with the Board of Education of Community School Board No. 18, and shall have the effect of insuring that the racial composition of the student body of the school will reflect the pupil population within the district, without necessarily being proportionate to it.

Such plan shall, in addition to the foregoing, designate the attendance areas of J.H.S. 232 and J.H.S. 252 as Choice of Admissions areas for the 1976-77 and 1977-78 school years and shall allow students residing therein to attend either J.H.S. 68 or J.H.S. 211 during such school years;

Such plan shall also include a local grievance procedure incident to the implementation of such plan, for parents who believe that the rights of their children to health, safety and quality education have been imperiled, contravened or denied as a result of their school assignment in accordance with the integration plan. The grievance procedure shall provide that respondent will, prior to the date for implementation of the plan, identify those students who are to be reassigned to a school other than the one they would other-

wise attend; notify the parents of such students of the proposed reassignment; advise those parents that if they believe that the proposed reassignment would adversely affect their child's health, safety or access to quality education, they may notify the school authorities to that effect, in writing, setting forth the nature and basis of their concerns; determine, in each case in which such a grievance is submitted, whether in the judgment of the respondent board of education or its designated officers or employees the child's health, safety or access to quality education would in fact be impaired; communicate that determination to the parents, in writing; afford the parents an opportunity for a meeting with appropriate school authorities for further discussion, upon written request by the parents; make a final determination upon such grievance, in writing; and submit to me, for approval, a summary of the determinations made by respondent or its designated officers or employees in any grievances submitted.

The City Board shall, after review of the Chancellor's plan, submit such plan to me no later than March 15, 1976, together with such modifications, if any, as the City Board may deem appropriate; and it is further

ORDERED that the Board of Education of the New York City School District direct the Board of Education of Community School District No. 18 to submit to the Chancellor by no later than November 1, 1977, a plan to achieve greater racial integration in all of the junior high schools located within Community School District No. 18,



effective September 1, 1978; and that the City Board shall review such plan, together with the Chancellor's recommendations thereon, and shall submit such plan to me, together with any modifications recommended by the City Board, no later than January 1, 1978.

IN WITNESS WHEREOF, I, Ewald B.

Nyquist, Commissioner of  
Education of the State of New  
York, for and on behalf of the  
State Education Department, do  
hereunto set my hand and affix  
the seal of the State Education  
Department, at the City of Albany,  
this 18th day of December, 1975.



*Ewald B. Nyquist*  
Commissioner of Education

UNITED STATES COURT OF APPEALS  
For the Second Circuit

MARY ANDERSON, MAZELL PEOPLES, CHRISTINE JAMES,  
ANNIE BARNES, CHRISTINE PEYTON, FRANCINE TOLLI-  
VER, ELIZABETH MINNIEFIELD, YVONNE HENLEY, ANN  
SCRUGGS, BLANCHE THOMAS and EVELYN PERKINS,

Plaintiffs-Appellees,

-vs-

AFFIDAVIT

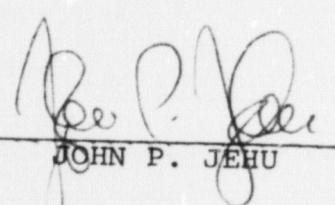
JOSEPH W. MCGOVERN, Chancellor of the Board of  
Regents of the State of New York; WILLARD A.  
GENRICH, a member of the Board of Regents; THE  
BOARD OF REGENTS OF THE STATE OF NEW YORK; and  
DR. EWALD B. NYQUIST, Commissioner of Educa-  
tion of the State of New York,

Defendants-Appellants.

STATE OF NEW YORK)  
                                  ) ss.:  
COUNTY OF ALBANY )

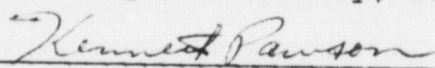
JOHN P. JEHU, being duly sworn, deposes and says:

1. That he is an attorney of record for defendants-appellants herein.
2. That on Tuesday, February 24, 1976, he served two copies each of the Supplemental Affidavit on behalf of all defendants-appellants in the above-entitled matter on all opposing counsel, by causing the same to be placed in a United States Post Office receptacle, postage prepaid.

  
\_\_\_\_\_  
JOHN P. JEHU

Sworn to before me this

26<sup>th</sup> day of February, 1976.

  
\_\_\_\_\_

KENNETH PAWSON  
Notary Public, State of New York  
Qualified in Albany County  
Commission Expires March 30, 1977





February 24, 1976

Hon. A. Daniel Fusaro  
Clerk  
United States Court of Appeals  
for the Second Circuit  
United States Courthouse  
Foley Square, New York 10007

Dear Mr. Fusaro:

Re: Anderson, et al. v. McGovern, et al.  
75-7381

---

Enclosed herewith please find 25 copies of supplemental affidavit on behalf of defendants-appellants in the above-entitled case, informing the Court of more recent developments pertinent to this litigation. Two copies of each are being forwarded by even mail to all counsel.

Sincerely,

John P. Jehu

Enclosures

JPJ:pal